Official Gazette

REPUBLIC OF THE PHILIPPINES

Edited at the Office of the President, under Commonwealth Act No. 638
Entered as second-class matter, Manila Post Office, December 26, 1905

VOL. 46 MANILA, PHILIPPINES, JUNE 1950 NO. 6

Table of Contents

EXECUTIVE ORDERS, PROCLAMATIONS AND ADMINISTRATIVE ORDERS

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER No. 321

PRESCRIBING THE CODE OF THE NATIONAL FLAG AND THE NATIONAL ANTHEM OF THE REPUBLIC OF THE PHILIPPINES.

Reverence and respect for the accepted symbols of national solidarity are indicative of true patriotism and love of country. In order to develop and consecrate such sublime virtues and to inculcate in the minds of our people and a just pride in their native land, I, Elpidio Quirino, President of the Philippines, by virtue of the powers vested in me by law, do hereby prescribe the following rules for the observance of the National Flag and the National Anthem of the Republic of the Philippines:

I. THE NATIONAL FLAG

1. The National Flag shall be displayed in all public office buildings, official residence, public squares, and institutions of learning every day throughout the year, and shall be raised at sunrise and lowered at sundown. It should be on the mast at the break of day, should remain flying throughout the day but shall not stay flying after the sun has actually set, except when specially prescribed. The flagstaff must be straight, slightly and generally tapering at the end.

2. The Flag should never be used to return the salute of any individual or organization. It should never be dipped by way of compliment or salute to or for any person, except when used for exchanging courtesy as official act between States.

3. The only flag that may float above the National Flag is a church pennant to symbolize "God above Country."

4. The Flag, if flown from a flagpole, should have its blue field on top in time of peace and the red field on top in time of war; if in a hanging position, the blue field should be to the right (left of the observer) in time of peace, and the red field to the right (left of observer) in time of war.

5. In hoisting the Flag, it should be raised clear to the top-end of the flagpole which, if planted on the ground, should be at a prominent place and higher than the roof of the principal building in the compound, or of such height

as would give the flag a commanding position within the compound. If the pole is attached to a building, it should be on top of its roof, and if placed at a window, it must project at an angle pointing upward.

6. When the National Flag is used together with the flag of the Armed Forces or civil organization or with that of another nation, it must always be above or on the right of the other flag. When the National Flag is displayed in a parade with those of foreign nations, it shall always be in front of the center of the line of the other flags.

7. When the Flag is passing in a parade or in review, the people, if walking, should halt, stand at attention, uncover and salute; if sitting, they should stand at attention, uncover and salute.

8. The Flag shall be displayed on Independence Day (July fourth), on National Heroes Day (November thirtieth), Rizal Day (December thirtieth) of each year, and on such other historic of special occasions as the President may designate, not only in all office public buildings, official residences, public squares, and institutions of learning, but, whenever practicable, also in all private buildings and homes, from sunrise to sunset.

9. On national holidays of his country and other historic or special occasions, any alien whose country is at peace with the Philippines may display the flag of his nation on any building or property owned or rented by him without simultaneously displaying the Flag of the Philippines. However, if the alien is located in a building or other property owned or rented by the Philippine Government, the Flag of the Philippines shall always be displayed when that of his own country is displayed. When so displayed, the flag of the alien's country should at least be of the same size as the Flag of the Philippines which shall be placed on the right of the former (left of the observer facing the flags).

10. When lowering the Flag, no part thereof should touch the ground. It should be handled and folded reverently. While the Flag is being raised or lowered, and while the National Anthem is being played the people should face the Flag, stand at attention, uncover, and salute. Moving vehicles should stop, and the passengers should alight, stand at attention, uncover, and salute.

11. The Flag may be hoisted at half-mast in sign of mourning. To display the Flag at half-mast, it must first be hoisted to full-mast, allowing it to fly there for a moment before bringing it to half-mast. From this position it may be raised but not lowered. To lower the Flag at sunset or at any other time when ordered, it must again be hoisted to full-mast before bringing it down.

12. The Flag shall never be festooned, and shall always hang with nothing to cover its surface. It shall always occupy the highest place of honor and shall not be placed under any picture, or below a person.

13. The Flag shall never be used as a staff or whip, or covering for tables, or curtain for doorways. However, the Flag may be used by the Armed Forces to cover the casket of their honored dead, which includes deceased civilians who had rendered services in the Army, Navy, or civil office of great responsibility. The white triangle of the sun and stars will cover the head end of the casket, the blue stripe to the right, the red to the left of the deceased, with both colors evenly divided on each side of the casket. The Flag should not be lowered to the grave or allowed to touch the ground. Wreaths of flowers should not be placed on top of a flag-shrouded casket. A small cross of flowers may be placed over the Flag as a symbol of "God above Country."

14. No imprint shall be made on the Flag nor shall it be marred by advertisement, or in any manner desecrated. It shall not be worn as a whole or part of a costume. It shall not be used as a pennant in the hood or in any part of a motor vehicle except in celebration of the Independence Day, "Fourth of July," or on such other patriotic occasions as the President may designate.

15. It is inappropriate to use the Flag in a dancing pavilion or in any place where hilarity is prevailing. Its use inside or outside a cockpit, club or other places where gambling or other vices are held is prohibited.

16. When the Flag is used in unveiling a statue or monument, it should not be allowed to fall to the ground but should be carried aloft to wave out, forming a distinctive feature of the ceremony. The Flag shall never be used as a covering for the statue.

17. A National Flag worn out through wear and tear, should not be thrown on a garbage heap or used as rag. It should be reverently burned to avoid misuse or desecration thereof.

II. THE NATIONAL ANTHEM

1. The National Anthem should not be played except on public acts of official or semi-official character or in formal ceremonies of civic nature. People in the immediate vicinity, if outdoors, should face the band, uncover, stand at attention, and salute.

2. Whenever a band is present during the lowering of the Flag, the National Anthem should be played by the band. The Flag should be lowered slowly in such a manner that the termination of the lowering coincides with the last note of the music. Anyone present should face the Flag, stand at attention, and salute as hereinafter

prescribed in this Order. If the National Anthem is played indoors, everyone present should stand at attention, face the band, and salute.

3. The National Anthem should not be played and sung for mere recreation, amusement or entertainment purposes in social gatherings purely private in nature or at political or partisan meetings or places of hilarious or vicious amusement. It should, however, be sung in schools so the children may know it by heart.

MANNER OF SALUTING

1. Members of the Armed Forces of the country and those belonging to semi-military and police organizations in uniform should adopt the military salute provided in their regulations.

2. Civilians if outdoors should stand at attention, and if wearing hats, should uncover and hold the hats over their hearts. Complete silence should be observed and no person should be allowed to walk while the ceremony is going on.

Done in the City of Manila, this 12th day of June, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fourth.

ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Seeretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 322

ORGANIZING A PORTION OF THE MUNICIPALITY OF SAGAY, ORIENTAL MISAMIS, INTO A REGULAR MUNICIPALITY UNDER THE NAME OF GUINSILIBAN.

Upon the recommendation of the Secretary of the Interior and pursuant to the provisions of section 68 of the Revised Administrative Code, there is hereby created in the Province of Oriental Misamis, a municipality to be known as the municipality of Guinsiliban, which shall consist of the eastern portion of the municipality of Sagay and separated therefrom by a straight line starting from an old Spanish concrete monument 1.00 meter square at barrio Manuyag marked corner No. 2 on the map, which marks the old boundary of Sagay and the former municipality of Guinsiliban, and running due north with approximate dis-

tance of 6,500 meters until it intersects the boundary line between the municipalities of Sagay and Mahinog, marked corner No. 3 on the map.

The municipality of Guinsiliban contains the following barrios: Guinsiliban, which shall be the seat of government Maac, Cabuan and Liong.

The municipality of Sagay shall have its present territory, minus the portion thereof included in the municipality of Guinsiliban.

The municipality of Guinsiliban, as herein organized, shall begin to exist upon the appointment and qualification of the mayor, vice-mayor and a majority of the councilors thereof.

Done in the City of Manila, this 13th day of June, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fourth.

ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 323

TRANSFERRING THE SEAT OF GOVERNMENT OF THE MUNICIPALITY OF DINAIG, PROVINCE OF COTABATO, TO THE SITIO OF CAPITON.

Upon the recommendation of the Secretary of the Interior and pursuant to the provisions of section 68 of the Revised Administrative Code, the seat of government of the municipality of Dinaig, Province of Cotabato, is hereby transferred from its present location at Nuro to the sitio of Capiton in the same municipality.

The transfer herein made shall take effect immediately.

Done in the city of Manila, this 16th day of June, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fourth.

ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 324

ORGANIZING A CERTAIN PORTION OF THE MUNICIPALITY OF ABUYOG, PROVINCE OF LEYTE, INTO A REGULAR MUNICIPALITY UNDER THE NAME OF MACARTHUR.

Pursuant to the provisions of section 68 of the Revised Administrative Code and upon the recommendation of the Secretary of the Interior, there is hereby created in the Province of Leyte, a municipality to be known as the municipality of MacArthur comprising the northern part of the municipality of Abuyog and separated therefrom by the following line:

Starting at the point on the east coast of Leyte between the mouth of the Balere-Maya River and the mouth of the Bito River, in a line running westerly in such a way as to place barrios Pongon, Liwayway, Danao and Tinawan within the municipality of MacArthur, and barrios A. Bonifacio, Pionocawan, Bugho, Binoljo and Manarog within the municipality of Abuyog, until it intersects the present Baybay-Abuyog boundary in the west. (Map of Abuyog, prepared by draftsman Santiago Bonife and Governor Landia used in describing this boundary line.)

The municipality of MacArthur as herein created contains the following barrios: Tarragona, which shall be the seat of government, Toyo, Burabod, Kapuglosan, Palale, Kiling, San Isidro, Causwagan, Osmeña, Maya, Batug, General Luna, Kasuntingan, Tinawan, Liwayway, Danao, and Pongon.

The municipality of Abuyog shall have its present territory minus the portion thereof included in the municipality of MacArthur.

The municipality of MacArthur, as herein organized, shall begin to exist upon the appointment and qualification of the mayor, vice-mayor and a majority of the councilors thereof.

Done in the City of Manila this 17th day of June, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fourth.

ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 325

EXTENDING THE TERM OF THE CODE COMMISSION

WYEREAS, the Code Commission created by Executive Order No. 48, dated March 20, 1947, has already finished the new Civil Code, which will soon take effect, and the draft of the Code of Crimes, which has been recently submitted to the Congress;

WHEREAS, the Code Commission has still to undertake the task of revising the Code of Commerce and compiling other statutes than those found in the codes;

WHEREAS, the Code Commission has been requested by the Senate Committee on Codes to submit its observations on many proposed amendments to the new Civil Code; and

WHEREAS, the Code Commission must appear at the public hearings to be held jointly by the corresponding committees of both Houses of Congress to present the reasons for the proposed Code of Crimes;

NOW, THEREFORE I, Elpidio Quirino, President of the Philippines, by virtue of the powers in me vested by Republic Act No. 422, do hereby extend the term of the Code Commission for one year beginning July 1, 1950.

Done in the City of Manila, this 17th day of June, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fourth.

ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 326

ORGANIZING A PORTION OF THE MUNICIPALITY OF HINUNANGAN, PROVINCE OF LEYTE, INTO AN INDEPENDENT MUNICIPALITY UNDER THE NAME OF SILAGO.

Upon the recommendation of the Secretary of the Interior, and pursuant to the provisions of section 68 of the Revised Administrative Code, the barrios or Silago, Hinga-

tongan, Laguma, Kikilo, Bulac, Sap-ang, Awayon, and Balawagon, and the sitios of Combis, San Roque, Talaque, Malen, and Mabadyang, all of the municipality of Hinunangan, Province of Leyte, are hereby organized into an independent municipality under the name of Silago, with the seat of government at barrio Silago.

The municipality of Silago shall be separated from the municipality of Hinunangan by a straight line starting from a point immediately north of the center of barrio Ponlol passing through the summit of Mt. Nacolod to the intersection of this line with the Hinunangan-Libagon boundary line.

The municipality of Hinunangan shall have its present territory minus the portion thereof included in the municipality of Silago.

The municipality of Silago shall begin to exist upon the appointment and qualification of the mayor, vice-mayor, and a majority of the councilors thereof.

Done in the City of Manila, this 20th day of June, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fourth.

ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 327

AMENDING EXECUTIVE ORDER NO. 289, SERIES OF 1949, ORGANIZING THE MUNICIPALITY OF SANTA ANA, PROVINCE OF CAGAYAN.

Upon the recommendation of the Secretary of the Interior, the third and fourth paragraphs of Executive Order No. 289, series of 1949, organizing the municipality of Santa Ana, Province of Cagayan, are hereby amended to read as follows:

"On the south by a straight line from a point on kilometer 632 on the Dugo-San Vicente road running southeasterly to Malencon Island on the Pacific side.

"The municipality of Santa Ana contains the barrios of San Vicente, Santa Cruz, Palauig, Diora, which shall be the seat of the municipal government, Racat, Casambalangan, Casagan, Batu, Marede, Kapanikian, and Lazam-Dungeg."

Done in the City of Manila, this 16th day of June, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fourth.

ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 328

PRESCRIBING RULES AND REGULATIONS TO CARRY OUT THE TRADE AND FINANCIAL AGREEMENTS BETWEEN THE PHILIPPINES AND THE SUPREME COMMANDER FOR THE ALLIED POWERS, DESIGNATING THE AGENCIES THEREFOR, AND FOR OTHER PURPOSES.

By virtue of the powers vested in me by law, and in order to carry out the commitments of the Government of the Republic of the Philippines under the Trade and Financial Agreements and the Trade Plan between the Philippines and the Supreme Commander for the Allied Powers, which were signed at Tokyo, Occupied Japan on May 18, 1950, I, Elpidio Quirino, President of the Philippines do hereby order:

SECTION 1. From and after the effective date of this Order no commodity may be exported to or imported from Occupied Japan without an export or import license, as the case may be, from the Central Bank of the Philippines or the Import Control Administration which are hereby designated respectively as the export and import licensing agencies of the Government. These agencies shall each set up a separate section or division within their respective organization to handle the licensing of all barter trade transactions exclusively. All licenses issued shall be clearly marked as having been specifically granted under the Philippine-SCAP Trade and Financial Agreements.

SEC. 2. The annual exports and imports of the Philippines to and from Occupied Japan as contained in the Trade Plan shall be allocated and the licenses therefor referred to in the next preceding section shall be issued only to bona fide Philippine exporters and importers subject to section 9 hereof and such rules and regulations as may be prescribed and promulgated by the Import Control Adminis-

tration and the Central Bank of the Philippines as licensing agencies of the Government.

Copies of such rules and regulations and their subsequent revisions and/or amendments shall be made available to the members of the Committee on Trade and Financial Agreements hereinafter constituted.

SEC. 3. In order to carry out the provisions of section 1(*f*) and 1(*g*) of the Trade Agreement there is hereby created a Committee on Trade and Financial Agreements composed of a representative each from the Department of Foreign Affairs as Chairman, the Departments of Finance, Commerce and Industry, and Agriculture and Natural Resources, Central Bank, the Import Control Board, and the Philippine Relief and Trade Rehabilitation Administration, as members, to study ways and means, consistent with export/import and exchange laws, rules and regulations, of effectively implementing all trade and financial agreements as have been, or may hereafter be, entered into between the Philippines and other countries; exchange such information with the Supreme Commander for the Allied Powers as may from time to time be necessary; review the progress of all barter transactions as they affect the national economy; study the commodity composition of trade plans, including their periodic revisions if and when necessary; and submit a report of its findings and recommendations to the President as often as it is so directed.

SEC. 4. The manner of payment of all barter transactions involving goods and/or services with Occupied Japan, as outlined in the Financial Agreement with the Supreme Commander for the Allied Powers, or with any other country with which the Philippines may have similar trade arrangement, shall be prescribed and promulgated by the Central Bank of the Philippines which is hereby designated as the principal financial agent of the Government.

SEC. 5. For the purpose of handling the transactions specified in the next preceding section, the Central Bank of the Philippines shall designate its sub-agent banks. A list of the banks so designated shall be furnished the Department of Foreign Affairs for transmittal to the Supreme Commander for the Allied Powers.

SEC. 6. To coordinate the work of the licensing agencies the Central Bank of the Philippines shall certify to the Import Control Board the amount of export credits from Occupied Japan against which import licenses may be issued during a specified period by the Board.

The Import Control Board shall furnish the Central Bank daily with a copy each of the import licenses issued by it.

A monthly summary of all transactions shall be reported by both agencies to the Committee.

SEC. 7. To insure the development of balanced trading the Import Control Board shall not issue import licenses in excess of the amounts of export credits certified to it by the Central Bank.

SEC. 8. Only the commodities specified in the Trade Plan may be exported to and imported from Occupied Japan. However, upon the recommendation of the Committee and by mutual agreement between the Government and the Supreme Commander for the Allied Powers, the values of the different commodities in the Plan may be increased or decreased and/or new items included in or old ones deleted from it.

SEC. 9. The proceeds of the export trade with Occupied Japan and with any other country trading with the Philippines on a barter basis, shall be paid fully in pesos.

SEC. 10. To be entitled to trade with Occupied Japan a person, firm, or establishment must be:

(*a*) One duly licensed and registered to do business in the Philippines and has paid all lawful taxes and fees due the Government; and

(*b*) One duly registered for quota allocation with the export and/or import licensing agencies herein specified.

The licensing agencies may refuse to register or may cancel the registration of any exporter or importer if in their judgment such registration is in any way inimical to the best national interests.

SEC. 11. Export and import quotas and licenses referred to in sections 1 and 2 shall be granted only to the parties mentioned in the next preceding section upon their specific application therefor containing the following information under oath:

(*a*) Name and address of business;

(*b*) Citizenship;

(*c*) Specific kind, number and issue date of privilege tax receipt;

(*d*) Statistical yearly data for 1948 and 1949 on quantity and value of exports and/or imports of the commodity for quota application is filed;

(*e*) Bona fide export and/or import orders accepted; and

(*f*) Any other data that may be required.

SEC. 12. An export or import license that is duly and properly issued shall remain valid during the quota period for which it was issued. If the license is not used during the period of its effectivity, it shall be cancelled.

SEC. 13. In the allocation of import licenses, the needs of the Philippine Government and its instrumentalities and agencies shall be given priority. The requirements of such instrumentalities and agencies as submitted to the Committee on Trade and Financial Agreements which formed the basis of Trade Plan No. 1 shall be consulted in this regard.

The term "textiles and manufactures" as used in the schedule of imports in the Trade Plan shall not be deemed to include cotton prints, colored yarns, denims, khakis, herringbone twills, and/or bleached and dyed assorted sheetings. Import allocations for grey cloth and cotton yarns shall exclusively be assigned as raw materials for the use of the Finishing Plant of the National Development Company for processing.

SEC. 14. Any commodity exported or imported in violation of this Order and of the rules and regulations promulgated by the licensing agencies shall be subject to forefeiture, and the guilty party shall be subject to penalties and disqualified in accordance with existing laws from obtaining any other license.

SEC. 15. Any violation by an exporter or an importer of the provisions of this Order and of the rules and regulations promulgated by the licensing agencies shall serve as a ground for the immediate revocation of his license to do business in the Philippines, and in the case of an alien shall be regarded as sufficient cause for his deportation.

SEC. 16. This Order shall take effect on June 23, 1950, and all shipments leaving ports of embarkation on or subsequent to said date shall be subject to the provisions of this Order.

Done in the City of Manila, this 22nd day of June, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fourth.

ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION NO. 185

DECLARING THE PERIOD FROM JULY 24 TO 29, 1950, AS INDUSTRIAL PEACE WEEK

WHEREAS, the well-being, peace and prosperity of the nation demand that its productive forces be husbanded and maintained at the highest possible level;

WHEREAS, this can be accompanied only if labor and capital work harmoniously together under terms and conditions satisfactory to both and consistent with the public interest and welfare;

WHEREAS, the ends of democracy and free enterprise can be served best if labor and capital are allowed to compose their mutual problems, reach an understanding on their respective rights and obligations freely and voluntarily and with the least government intervention; and

WHEREAS, a labor-management conference designed to lay the foundations of industrial peace will be held on July 24, 1950, to last for ten days;

NOW THEREFORE, I, Elpidio Quirino, President of the Philippines, by virtue of the powers vested in me by law, do hereby declare the period from July 24 to 29, 1950, as Industrial Peace Week. I call upon all the chambers of commerce, trade bodies and business organizations, all industrial and business executives, and all duly organized labor organizations and trade unions and their leaders to send their representatives to the labor-management conference to be held beginning July 24, 1950, and to give their full support and cooperation thereto. I also call upon the government offices and public officials concerned to lend all the assistance necessary to insure the success of the conference.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 6th day of June, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fourth.

[SEAL]

ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION NO. 186

FIXING THE DATE OF EFFECTIVITY OF REPUBLIC ACT NO. 505 ENTITLED "AN ACT TO CREATE THE PROVINCES OF ORIENTAL MINDORO AND OCCIDENTAL MINDORO."

By virtue of the power conferred upon me by section 8 of Republic Act No. 505, entitled "An Act to create the Provinces of Oriental Mindoro and Occidental Mindoro," I, Elpidio Quirino, President of the Philippines, do hereby

fix the fifteenth day of November, nineteen hundred and fifty, as the date of effectivity of said Act.

In witness whereof, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 13th day of June, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philipines, the fourth.

[SEAL] ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION No. 187

RESERVING AS SITE FOR LOW-COST HOUSING PROJECTS A PARCEL OF LAND IN THE DISTRICT OF TONDO, CITY OF MANILA.

Pursuant to the provisions of section 83 of Commonweatlh Act No. 141, and upon recommendation of the Secretary of Agriculture and Natural Resources, I hereby reserve as a site for low-cost housing projects under the administration of the People's Homesite and Housing Corporation, subject to private rights if any there be, and subject to future survey, that tract of land located in the district of Tondo, City of Manila, and bounded on the north, by the Tondo Tenement House of the Government and the Estero de Vitas, on the east, by private properties, on the south, by Azcarraga Street, and on the west, by the Dewey Boulevard Extension.

In witness whereof, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 17th day of June, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fourth.

[SEAL] ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION No. 188

RESERVING FOR RICE, CORN AND OTHER FOOD PRODUCTION PURPOSES CERTAIN PARCELS OF THE PUBLIC DOMAIN IN BARRIOS ADTUYONG, ROXAS AND DAGUMABAAN, MUNICIPALITY OF MARAMAG, AND BARRIOS BARANDIAS, KIBANING AND KALILANGAN, MUNICIPALITY OF PANANTUKAN, ALL IN THE PROVINCE OF BUKIDNON, ISLAND OF MINDANAO.

Upon recommendation of the Secretary of Agriculture and Natural Resources and pursuant to the provisions of section 83 of Commonwealth Act Numbered One hundred forty-one, as amended, I hereby withdraw from sale or settlement and reserve for rice, corn and other food production purposes under the administration of the Rice and Corn Production Administration of the National Development Company, subject to private rights, if any there be, and to the condition that the timber and other forest products therein, as well as the use and occupancy of the areas indicated as timber land or forest reserve, shall be placed under the administration and control of the Bureau of Forestry, in accordance, with the Forest Laws and Regulations, the following described parcels of the public domain situated in barrios Adtuyon, Roxas and Dagumabaan, municipality of Maramag, and barrios Barandias, Kibaning and Kalilangan, municipality of Panantukan, all in the province of Bukidnon, Island of Mindanao, to wit:

Lot 1.—Bounded on the N., by property of Froilan Pimentel et al (public land), river and lot 3 of plan Swo–5556; on the E., by property of Froilan Pimentel et al (public land), public land and Kuya River 12.00 m. wide; on the S., by Kuya River 12.00 m. wide and Mulita River 15.00 m. wide; on the SW., by Mulita River and property of the Republic of the Philippines (lot 5); and on the W., by property of the Republic of the Philippines (lot 5). Beginning at a point marked 1 on plan, being N. 66° 03′ W., 10,001.17 m. from B.L.L.M. 4, municipality of Maramag, Bukidnon: thence S. 14° 41′ E., 224.93 m. to point 2; thence S. 12° 26′ E., 495.81 m. to point 3; thence S. 51° 13′ E., 174.75 m. to point 4; thence S. 30° 31′ E., 168.60 m. to point 5; thence S. 27° 26′ E., 695.30 m. to point 6; thence S. 53° 51′ W., 284.36 m. to point 7; thence S. 82° 20′ W., 887.80 m. to point 8; thence S. S. 16° 40′ W., 1,209.56 m. to point 9; thence S. 28° 01′ W., 1,048.10 m. to point 10; thence S. 72° 10′ W., 523.15 m. to point 11; thence N. 63° 53′ W., 431.54 m. to point 12; thence S. 84° 00′ W., 456.82 m. to point 13; thence N. 05° 25′ W., 175.98 m. to point 14; thence N. 29° 17′ W., 233.93 m. to point 15; thence S. 75° 44′ W., 342.62 m. to point 16; thence N. 34° 49′ W., 306.77 m. to point 17; thence N. 38° 28′ W., 290.68 m. to point 18; thence N. 19° 00′ W., 153.22 m. to point 19; thence S. 58° 44′ W., 1,594.78 m. to point 20; thence

N. 47° 20′ W., 525.32 m. to point 21; thence N. 12° 41′ W., 1,681.88 m. to point 22; thence N. 15° 11′ W., 320.86 m. to point 23; thence S. 83° 39′ W., 298.25 m. to point 24; thence N. 24° 05′ W., 680.54 m. to point 25; thence N. 68° 56 W., 198.30 m. to point 26; thence N. 21° 14′ W., 390.84 m. to point 27; thence N. 49° 46′ W., 94.03 m. to point 28; thence N. 32° 35′ W., 253.08 m. to point 29; thence N. 40° 59′ W., 880.66 m. to point 30; thence N. 12° 07′ E., 131.95 m. to point 31; thence N. 81° 22′ W., 865.36 m. to point 32; thence N. 45° 41′ W., 1,967.83 m. to point 33; thence N. 19° 56′ E., 490.23 m. to point 34; thence S. 82° 52′ E., 2,321.28 m. to point 35; thence N. 41° 45′ E., 235.21 m. to point 36; thence S. 64° 43′ E., 451.07 m. to point 37; thence S. 72° 25′ E., 788.54 m. to point 38; thence S. 23° 43′ E., 824.54 m. to point 39; thence S. 27° 47′ E., 405.06 m. to point 40; thence S. 9° 55′ E., 554.72 m. to point 41; thence N. 76° 18′ E., 134.82 m. to point 42; thence N. 64° 00′ E., 542.09 m. to point 43; thence N. 70° 12′ E., 80.48 m. to point 44; thence S. 89° 16′ E., 273.10 m. to point 45; thence N. 69° 03′ E., 83.46 m. to point 46; thence N. 70° 43′ E., 325.25 m. to point 47; thence S. 83° 03′ E., 184.64 m. to point 48; thence S. 82° 09′ E., 263.96 m. to point 49; thence S. 46° 21′ E., 587.34 m. to point 50; thence S. 84° 32′ E., 226.64 m. to point 51; thence S. 84° 26′ E., 231.21 m. to point 52; thence N. 71° 11′ E., 85.69 m. to point 53; thence N. 81° 06′ E., 114.72 m. to point 54; thence S. 88° 40′ E., 133.43 m. to point 55; thence S. 83° 43′ E., 133.65 m. to point 56; thence S. 81° 35′ E., 142.07 m. to point 57; thence N. 83° 41′ E., 144.65 m. to point 58; thence N. 6° 07′ E., 9.00 m. to point 59; thence S. 74° 05′ E., 314.66 m. to point 60; thence N. 79° 25′ E., 307.18 m. to point 61; thence N. 67° 04′ E., 114.68 m. to point 62; thence N. 71° 47′ E., 147.49 m. to point 63; thence S. 10° 12′ E., 3.33 m. to point 64; thence S. 79° 25′ E., 76.64 m. to point 65; thence S. 77° 43′ E., 393.42 m. to point 66; thence S. 78° 00′ E., 253.85 m. to point 67; thence S. 50° 17′ E., 190.32 m. to point 68; thence S. 74° 53′ E., 42.13 m. to point of beginning, containing an area of 29,595,300 square meters, more or less.

All points referred to are indicated on the plan and are marked on the ground as follows: point 1, by B.S./R.C.P.A. monument; points 2, 5, 8, 9, 10, 11, 12, 15, 16, 17, 20, 21, 22, 23, 24, 27, 28, 29, 32, and 35 to 42 inclusive, by crosses on trees; points 3, 4, 6, 13, 14, 18, 19, 25, 26, 30 and 31, by stakes; point 7, by cross on rock; points 33 and 34, by P.L.S./R.S. monuments; and the rest, by P.L.S. cylindrical concrete monuments.

Lot 2.—Bounded on the N., by public land; on the E. and SE.; by public land; on the S., by public land and lot 3 of plan Swo–25556; and on the W., by river 15.00 m. wide and public land. Beginning at a point marked 1 on plan, being N. 65° 59′ W., 10,042.05 m. from B.L.L.M. 4, municipality of Maramag, Bukidnon; thence N. 50° 11′ W., 189.08 m. to point 2; thence N. 77° 50′ W., 258.99 m. to point 3; thence N. 77° 43′ W., 393.38 m. to point 4; thence N. 79° 40′ W., 81.18 m. to point 5; thence N. 9° 14′ E., 3.30 m. to point 6; thence S. 71° 48′ W., 147.60 m. to point 7; thence S. 67° 08′ W., 115.02 m. to point 8; thence S. 79° 14′ W., 303.97 m. to point 9; thence N. 74° 09′ W., 317.42 m. to point 10; thence S. 2° 57′ W., 9.00 m. to point 11; thence S. 83° 46′ W., 150.61 m. to point 12; thence N. 81° 00′ W., 134.52 m. to point 13; thence N. 83° 43′ W., 135.59 m. to point 14; thence N. 88° 40′ W., 133.40 m. to point 15; thence S. 80° 55′ W., 113.35 m. to point 16; thence S. 70° 18′ W., 83.48 m. to point 17; thence N. 84° 22′ W., 234.64 m. to point 18; thence N. 84° 52′ W., 219.64 m. to point 19; thence N. 46° 21′ W., 587.42 m. to point 20; thence N. 81° 57′ W., 270.08 m. to point 21; thence N. 83° 19′ W., 191.03 m. to point 22; thence S. 70° 33′ W., 321.59 m. to point 23; thence S. 67° 54′ W., 80.26 m. to point 24; thence N. 89° 16′ W., 273.12 m. to point

25; thence S. 58° 08′ W., 72.27 m. to point 26; thence N. 36° 23′ E., 212.73 m. to point 27; thence S. 77° 32′ E., 51.90 m. to point 28; thence N. 57° 34′ E., 132.94 m. to point 29; thence N. 28° 11′ E., 455.66 m. to point 30; thence N. 52° 12′ W., 98.08 m. to point 31; thence N. 29° 39′ E., 323.78 m. to point 32; thence N. 33° 35′ E., 177.30 m. to point 33; thence S. 68° 37′ E., 98.46 m. to point 34; thence N. 72° 37′ E., 68.90 m. to point 35; thence N. 52° 00′ E., 66.50 m. to point 36; thence N. 17° 45′ W., 124.84 m. to point 37; thence N. 7° 28′ W., 393.84 m. to point 38; thence N. 38° 54′ E., 505.52 m. to point 39; thence N. 50° 09′ E., 236.98 m. to point 40; thence N. 38° 08′ W., 320.14 m. to point 41; thence N. 14° 47′ W., 330.62 m. to point 42; thence S. 22° 03′ E., 34.53 m. to point 43; thence N. 27° 05′ W., 722.08 m. to point 44; thence N. 35° 42′ W., 946.60 m. to point 45; thence N. 19° 29′ E., 1,072.39 m. to point 46; thence N. 39° 49′ E., 1,999.45 m. to point 47; thence S. 67° 21′ E., 2,110.67 m. to point 48; thence N. 68° 17′ E., 1,433.10 m. to point 49; thence N. 79° 08′ E., 4,334.00 m. to point 50; thence N. 79° 08′ E., 4,335.20 m. to point 51; thence S. 40° 30′ W., 2,927.80 m. to point 52; thence S. 40° 30′ W., 2,928.00 m. to point 53; thence S. 52° 48′ W., 3,058.86 m. to point 54; thence N. 83° 50′ W., 2,817.60 m. to point 55; thence S. 0° 57′ W., 2,570.06 m. to the point of beginning, containing an area of 55,817.936 square meters, more or less.

All points referred to are indicated on the plan and area marked on the grounds as follows: points 27 to 40, inclusive, by stakes; points 41 to 49, inclusive, 53 and 54, by crosses on trees; and the rest, by P.L.S. cylindrical concrete monuments.

Lot 3.—Bounded on the N., by lot 2 of plan Swo–25556; on the E., by road; on the S., by lot 1 of plan Swo–25556; and on the W., by river 15.00 m. wide. Beginning at a point marked 1 on plan, being N. 71° 22′ W., 14,429.33 m. from B.L.L.M. 4, municipality of Maramag, Bukidnon; thence N. 58° 08′ E., 72.27 m. to point 2; thence S. 89° 16′ E., 273.12 m. to point 3; thence N. 67° 54′ E., 80.26 m. to point 4; thence N. 70° 33′ E., 321.59 m. to point 5; thence S. 83° 19′ E., 191.03 m. to point 6; thence S. 81° 57′ E., 270.08 m. to point 7; thence S. 46° 21′ E., 587.42 m. to point 8; thence S. 84° 52′ E., 219.64 m. to point 9; thence S. 84° 22′ E., 234.64 m. to point 10; thence N. 70° 18′ E., 83.48 m. to point 11; thence N. 80° 55′ E., 113.35 m. to point 12; thence S. 88° 40′ E., 133.40 m. to point 13; thence S. 83° 43′ E., 135.59 m. to point 14; thence S. 81° 00′ E., 134.52 m. to point 15; thence N. 83° 46′ E., 150.61 m. to point 16; thence N. 2° 57′ E., 9.00 m. to point 17; thence S. 74° 09′ E., 317.42 m. to point 18; thence N. 79° 14′ E., 303.97 m. to point 19; thence N. 67° 08′ E., 115.02 m. to point 20; thence N. 71° 48′ E., 147.60 m. to point 21; thence S. 9° 14′ W., 3.30 m. to point 22; thence S. 79° 40′ E., 81.18 m. to point 23; thence S. 77° 43′ E., 393.38 m. to point 24; thence S. 77° 50′ E., 258.99 m. to point 25; thence S. 50° 11′ E., 189.08 m. to point 26; thence S. 23° 34′ W., 20.01 m. to point 27; thence N. 50° 17′ W., 190.32 m. to point 28; thence N. 78° 00′ W., 253.85 m. to point 29; thence N. 77° 48′ W., 393.42 m. to point 30; thence N. 79° 25′ W., 76.64 m. to point 31; thence N. 10° 12′ W., 3.33 m. to point 32; thence S. 71° 47′ W., 147.49 m. to point 33; thence S. 67° 04′ W., 114.68 m. to point 34; thence S. 79° 25′ W., 307.18 m. to point 35; thence N. 74° 05′ W., 414.66 m. to point 36; thence S. 6° 07′ W., 9.00 m. to point 37; thence S. 83° 41′ W., 144.65 m. to point 38; thence N. 81° 35′ W., 142.07 m. to point 39; thence N. 83° 43′ W., 133.65 m. to point 40; thence N. 88° 40′ W., 133.43 m. to point 41; thence S. 81° 06′ W., 114.72 m. to point 42; thence S. 71° 11′ W., 85.69 m. to point 43; thence N. 84° 26′ W., 231.21 m. to point 44; thence N. 84° 32′ W., 226.64 m. to point 45; thence N. 46° 21′ W., 587.34 m. to point 46; thence N. 82° 09′ W., 263.96 m. to point 47; thence N. 83° 03′ W., 184.64 m. to point 48; thence S. 70° 43′

W., 325.25 m. to point 49; thence S. 69° 03′ W., 83.46 m. to point 50; thence N. 89° 16′ W., 273.10 m to point 51; thence S. 70° 12′ W., 80.48 m. to point 52; thence N. 63° 58′ E., 20.01 m. to point of beginning containing an area of 92,370 square meters, more or less.

All points referred to are indicated on the plan and are marked on the ground by P.L.S. cylindrical concrete Monuments.

Lot 4.—Bounded on the N., E. and SE., by public land; on the SW., by Malongmalong River; and on the NW., by public land. Beginning at a point marked 1 on plan, being north 32° 20′ W., 261.92 m. from B.L.L.M. 4, Maramag, Bukidnon; thence S. 71° 40′ W., 342.89 m. to point 2; thence N. 47° 17′ W., 204.83 m. to point 3; thence N. 42° 20′ E., 376.84 m. to point 4; thence N. 85° 33′ E., 337.53 m. to point 5; thence S. 18° 47′ W., 354.70 m. to point of beginning; containing an area of 155,980 square meters, more or less.

All points referred to are indicated on the plan and are marked on the ground as follows: point 3, by cross on tree; and the rest, by P.L.S./R.C.P.A. cylindrical monuments.

SWO–25644

Bounded on the N., by public land; on the E., by property of Froilan Pimental, lot 1 of plan Swo–25556 (Republic of the Philippines) and public land; and on the S. and W., by Public land. Beginning at a point marked "1" on the plan, being N. 70° 36′ W., 196,660.91 m. from B.L.L.M. 4, Maramag, Bukidnon; thence S. 19° 56′ W., 490.23 m. to point 2; thence S. 45° 41′ E., 1,967.83 m. to point 3; thence S. 59° 32′ W., 1,565.21 m. to point 4; thence N. 89° 51′ W., 1,788.88 m to point 5; thence S. 78° 12′ W., 3.293.62 m. to point 6; thence S. 45° 02′ W., 8,802.00 m. to point 7; thence S. 10° 34′ W., 1,401.81 m. to point 8; thence S. 30° 17′ W., 1,368.35 m. to point 9; thence S. 28° 18′ E., 2,886.87 m. to point 10; thence S. 28° 09′ E., 1,681.65 m. to point 11; thence S. 42° 22′ W., 2,859.25 m. to point 12; thence S. 51° 41′ E., 5,093.00 m. to point 13; thence S. 2° 19′ W., 4,463.67 m. to point 14; thence S. 5° 37′ W., 4,276.40 m. to point 15; thence S. 11° 32′ W., 4,435.90 m. to point 16; thence S. 52° 01′ W., 5,661.62 m. to point 17; thence N. 76° 56′ W., 5,118.11 m. to point 18; thence N. 51° 59′ W., 2,546.53 m. to point 19; thence N. 60° 29′ E., 1,828.43 m. to point 20; thence N. 10° 54′ E., 2,230.70 m. to point 21; thence N. 1° 05′ W., 3,841.92 m. to point 22; thence N. 22° 12′ E., 2,029.09 m. to point 23; thence N. 04° 07′ W., 3,252.77 m. to point 24; thence N. 13° 35′ E., 2,936.50 m .to point 25; thence N. 14° 01′ W., 4,356.10 m. to point 26; thence N. 20° 32′ E., 2,766.06 m. to point 27; thence N. 10° 42′ W, 7,377.17 m to point 28; thence N. 63° 06′ E., 3,382.69 m. to point 29; thence N. 73° 40′ E., 2,349.89 m. to point 30; thence S. 39° 40′ E., 2,619.31 m. to point 31; thence N. 81° 44′ E., 2,843.27 m. to point 32; thence N. 76° 18′ E., 2,908.27 m. to point 33; thence N. 76° 00′ E., 1,252.57 m. to point 34; thence S. 9° 07′ W., 1,025.16 m to the point of beginning; containing an area of 298,333,763 square meters, more or less.

All points referred to are indicated on the plan and are marked on the ground as follows: points 1, 2, 10 and 12, by P.L.S./R.S. monuments; points 17, 19 and 28, by P.L.S./R.S. monument (under) marked crosses with nail in tree; and the rest, by marked crosses with nails on trees.

NOTE.—(This is subject to change to conform with the final survey as verified by the Director of Lands.)

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 29th day of June, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fourth.

[SEAL] ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION No. 189

RESERVING FOR RICE, CORN, AND OTHER FOOD PRODUCTION PURPOSES CERTAIN PARCELS OF THE PUBLIC DOMAIN SITUATED IN THE MUNICIPALITIES OF DULAWAN AND BULUAN, PROVINCE OF COTABATO, ISLAND OF MINDANAO.

Upon recommendation of the Secretary of Agriculture and Natural Resources and pursuant to the provisions of section 83 of Commonwealth Act Numbered One hundred forty-one, as amended, I hereby withdraw from sale or settlement and reserve for rice, corn and other food production purposes under the administration of the Rice and Corn Production Administration of the National Development Company, subject to private rights, if any there be, and to future classification and final survey, and to the condition that the timber and other forest products therein, as well as the use and occupancy of the areas indicated as timber land or forest reserve, shall be placed under the administration and control of the Bureau of Forestry, in accordance with the Forest Law and Regulations, the following described parcels of the public domain situated in the municipalities of Dulawan and Buluan, province of Cotabato, Island of Mindanao, to wit:

Lot No. 1.—A parcel of land, lot No. 1, situated in the municipality of Dulawan, province of Cotabato. Bounded on the north, by public land, on the east, by Ala River and lot No. 3 of the survey, on the south and west, by public land. Beginning at point 1 at the barrio of Kalandangan which is a point 300 meters east of the intersection of upper Bañga and Ala Rivers; thence southwesterly direction along the Ala River bank 5,700 meters to point 2 which is a point on the western bank of Ala River; thence due south 3,600 meters to point 3 which is in the barrio of Matiompong; thence due south 7,500 meters to point 4 which is in the barrio of Kalambug; thence due west 15,100 meters to point 5 which is in the barrio of Butuan; thence in a northwesterly direction 8,200 meters to point 6 at the eastern foot of Mt. Sulatan; thence in a northwesterly direction 15,000 meters to point 7 which is on the northeast foot of Mt.

Daguma; thence due east 14,700 meters to point 8 which is 400 meters west of the upper Kakal River in the barrio of Malatiman; thence due east 9,500 meters to point 9 which is the intersection of Ala River with a creek without name; thence in a southeasterly direction 6,200 meters to the point of beginning, containing an area of 41,815 hectares.

Lot No. 2.—A parcel of land, lot No. 2, situated in the municipality of Buluan, province of Cotabato. Bounded on the north, by Malasila River, Mt. Alip, public land and the boundary of the municipalities of Kidapawan and Buluan, on the east, by the Province of Davao, on the south, by public land, and on the west, by Lake Blingkong and public land. Beginning at point 1 which is 500 meters southeast of Lake Blingkong; thence due north 3,000 meters to point 2; thence in a northwesterly direction 5,700 meters to point 3 at the barrio of Alip 500 meters south of unnamed creek; thence due north 900 meters to point 4 in the barrio of Panag; thence in a northwesterly direction 2,200 meters to point 5 in the barrio of Damawato 400 meters southwest of Pamakling River; thence in a northeasterly direction 6,000 meters to point 6 at the southern foot of Mt. Alip; thence in a northeasterly direction 9,000 meters to point 7 north of Malasila River which is near the Kidapawan-Buluan municipal boundary; thence in an easterly direction along the Kidapawan-Buluan boundary 18,800 meters to point 8 which is a corner of the Davao-Cotabato provincial boundary; thence in a southeasterly direction along the Davao-Cotabato boundary 3,500 meters to point 9; thence in a southerly direction along the Davao-Cotabato boundary 14,000 meters to point 10; thence due west 27,000 meters to the point of beginning, containing an area of 52,000 hectares.

Lot No. 3.—A parcel of land, lot No. 3, situated in the municipality of Dulawan, Province of Cotabato. Bounded on the north, by public land, on the east, by public land and municipal boundary of Buluan and Dulawan, on the south, by public land and on the west, by lot No. 1 of this survey. Beginning at point 1 at barrio of Kalandangan which is 300 meters from the intersection of Upper Bañga and Ala Rivers; thence in a southwesterly direction to point 2 which is equivalent to corner 2 of lot 1 of this survey; thence due south 3,600 meters to point 3 at Matiompong barrio which is equivalent to corner 3 of lot 1 of this survey; thence due south 7,500 meters to point 4 which is equivalent to corner 4 of lot 1 of this survey; thence in a northeasterly direction 13,000 meters to point 5 which is midway between the municipal boundary of Dulawan and Buluan and barrio Mangilala or 700 meters northwest of that barrio; thence in a northwesterly direction 9,700 meters to the Maitumang Creek; thence in a southwesterly direction 3,000 meters to the point of beginning, containing an area of 9,471 hectares, more or less.

In witness whereof, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 29th day of June, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fourth.

[SEAL]

ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION No. 190

RESERVING FOR RICE, CORN AND OTHER FOOD PRODUCTION PURPOSES CERTAIN PARCELS OF THE PUBLIC DOMAIN IN THE BARRIO OF PANACAN, MUNICIPALITY OF ABORLAN, PROVINCE OF PALAWAN, ISLAND OF PALAWAN.

Upon recommendation of the Secretary of Agriculture and Natural Resources and pursuant to the provisions of section 83 of Commonwealth Act Numbered One hundred forty-one, as amended, I hereby withdraw from sale or settlement and reserve for rice, corn and other food production purposes under the administration of the Rice and Corn Production Administration of the National Development Company, subject to private rights, if any there be, and to future classification and final survey, and to the condition that the timber and other forest products therein, as well as the use and occupancy of the areas indicated as timber land or forest reserve, shall be placed under the administration and control of the Bureau of Forestry, in accordance with the Forest Laws and Regulations, the following described parcels of the public domain situated in the barrio of Panacan, municipality of Aborlan, Province of Palawan, Island of Palawan, to wit:

Lot 1.—Beginning at a point marked 1 on plan, being S. 67° 45′ W., 14,742.76 m. from B.L.L.M. 2, barrio of Panacan, municipality of Aborlan; thence N. 13° 20′ E., 705.15 m. to point 2; thence N. 09° 55′ E., 1517.09 m. to point 3; thence N. 41° 46′ W., 819.76 m. to point 4; thence N. 31° 23′ E., 962.80 m. to point 5; thence N. 16° 36′ W., 1123.85 m. to point 6; thence N. 07° 15′ W., 363.75 m. to point 7; thence N. 15° 10′ E., 900.34 m. to point 8; thence N. 24° 53′ W., 382.35 m. to point 9; thence N. 64° 25′ W., 492.02 m. to point 10; thence N. 29° 37′ E., 1053.46 m. to point 11; thence N. 28° 33′ W., 1853.13 m. to point 12; thence S. 65° 15′ E., 262.22 m. to point 13; thence S. 29° 10′ E., 426.15 m. to point 14; thence S. 30° 21′ E., 997.70 m. to point 15; thence S. 55° 12′ E., 636.00 m. to point 16; thence S. 45° 56′ E., 765.14 m. to point 17; thence S. 30° 48′ E., 269.94 m. to point 18; thence S. 7° 48′ E., 649.87 m. to point 19; thence S. 13° 14′ E., 679.40 m. to point 20; thence S. 53° 52′ E., 535.94 m. to point 21; thence S. 21° 17′ E., 392.13 m. to point 22; thence S. 56° 25′ E., 108.55 m. to point 23; thence S. 20° 02′ E., 71.50 m. to point 24; thence S. 78° 12′ E., 420.14 m. to point 25; thence S. 60° 23′ E., 298.98 m. to point 26; thence S. 41° 44′ E., 326.07 m. to point 27; thence S. 65° 57′ E., 328.02 m. to point 28; thence S. 32° 15′ E., 530.90 m. to point 29; thence S. 24° 31′ E., 387.91 m. to point 30; thence S. 66° 51′ E., 745.98 m. to point 31; thence S. 59° 46′ W., 542.50 m. to the point of beginning, containing an area of 16;589,850 square meters, more or less.

Bounded on the NE., by lots 2 and 3 of this survey and Katubungan River; on the SE., by proposes national highway (30.00) m. wide; and on the SW., and NW., by public land.

Lot 2.—Beginning at a point marked 1 on plan, being N. 32° 16′ E., 10,624.39 m. from B.L.L.M. 2, barrio of Panacan, municipality of Aborlan; thence S. 41° 05′ W., 8491.60 m. to point 2; thence S. 56° 10′ W., 2086.24 m. to point 3; thence S. 66° 07′ W., 1287.06 m. to point 4; thence S. 57° 26′ W., 1853.78 m. to point 5; thence S. 58° 59′ W., 5336.25 m. to point 6; thence N. 66° 57′ W., 745.98 m. to point 7; thence N. 24° 31′ W., 387.91 m. to point 8; thence N. 32° 15′ W., 530.90 m. to point 9; thence N. 65° 57′ W., 328.02 m. to point 10; thence N. 41° 44′ W., 326.07 m. to point 11; thence N. 60° 23′ W., 298.98 m. to point 12; thence N. 21° 09′ E., 430.75 m. to point 13; thence N. 80° 15′ E., 361.15 m. to point 14; thence N. 70° 46′ E., 452.20 m. to point 15; thence N. 22° 15′ E., 427.46 m. to point 16; thence N. 45° 37′ E., 186.87 m. to point 17; thence N. 37° 29′ E., 267.82 m. to point 18; thence N. 43° 33′ E., 456.18 m. to point 19; thence N. 38° 10′ E., 299.35 m. to point 20; thence N. 54° 21′ E., 287.36 m. to point 21; thence N. 55° 23′ E., 276.17 m. to point 22; thence N. 33° 26′ E., 428.03 m. to point 23; thence N. 46° 31′ E., 600.54 m. to point 24; thence N. 70° 08′ E., 1,000.65 m. to point 25; thence N. 11° 21′ E., 458.79 m. to point 26; thence N. 27° 48′ E., 233.41 m. to point 27; thence N. 60° 04′ E., 334.86 m. to point 28; thence S. 87° 58′ E., 528.81 m. to point 29; thence N. 68° 32′ E., 500.69 m. to point 30; thence N. 2° 18′ W., 220.36 m. to point 31; thence N. 27° 42′ E., 527.19 m. to point 32; thence N. 24° 42′ E., 454.08 m. to point 33; thence N. 26° 46′ W., 470.01 m. to point 34; thence N. 82° 16′ E., 516.92 m. to point 35; thence N. 87° 06′ E., 597.94 m. to point 36; thence N. 80° 52′ E., 430.34 m. to point 37; thence N. 63° 34′ E., 786.24 m. to point 38; thence N. 23° 07′ E., 680.32 m. to point 39; thence N. 35° 05′ E., 821.44 m. to point 40; thence N. 35° 23′ E., 613.20 m. to point 41; thence N. 32° 38′ E., 702.88 m. to point 42; thence N. 16° 17′ E., 860.18 m. to point 43; thence N. 7° 50′ E., 623.78 m. to ponit 44; thence N. 6° 23′ W., 922.38 m. to point 45; thence N. 6° 02′ W., 564.50 m. to point 46; thence N. 3° 27′ W., 418.70 m. to point 47; thence N. 0° 50′ W., 439.95 m. to point 48; thence N. 7° 34′ W., 579.68 m. to point 49; thence N. 1° 08′ W., 755.96 m. to point 50; thence N. 6° 33′ E., 547.82 m. to point 51; thence N. 24° 24′ E., 655.64 m. to point 52; thence N. 6° 57′ E., 495.81 m. to point 53; thence N. 3° 07′ E., 509.52 m. to point 54; thence N. 15° 54′ E., 202.88 m. to point 55; thence N. 40° 09′ E., 480.33 m. to point 56; thence N. 34° 12′ E., 940.46 m. to point 57; thence N. 19° 46′ E., 411.58 m. to point 58; thence N. 33° 25′ E., 643.85 m. to point 59; thence N. 65° 07′ E., 1,060.90 m. to point 60; thence N. 51° 43′ E., 639.08 m. to point 61; thence N. 25° 52′ E., 540.32 m. to point 62; thence N. 40° 20′ E., 392.44 m. to point 63; thence N. 54° 58′ E., 832.20 m. to point 64; thence S. 36° 37′ E., 606.42 m. to point 65; thence S. 44° 28′ E., 1,205.56 m. to point 66; thence S. 79° 06′ E., 405.14 m. to point 67; thence S. 78° 07′ E., 870.22 m. to point 68; thence N. 88° 13′ E., 441.75 m. to point 69; thence S. 85° 55′ E., 682.04 m. to point 70; thence S. 74° 43′ E., 708.50 m. to point 71; thence S. 58° 58′ E., 1,074.61 m. to point 72; thence S. 56° 16′ E., 589.76 m. to point 73; thence S. 73° 31′ E., 552.56 m. to point 74; thence S. 66° 56′ E., 334.60 m. to point 75; thence S. 80° 35′ E., 552.72 m. to point 76; thence S. 81° 04′ E., 498.60 m. to point 77; thence S. 79° 55′ E., 1,030.07 m. to point 78; thence S. 41° 23′ W., 3,498.75 m. to point 79; thence S. 42° 44′ W., 764.66 m. to point 80; thence S. 41° 55′ W., 744.90 m. to point 81; thence S. 40° 26′ W., 1,352.88 m. to point 82; thence S. 36° 37′ W., 980.82 m. to point 83; thence S. 36° 51′ W., 1,135.03 m. to point 84; thence S. 39° 41′ W., 643.90 m. to point of the beginning, containing an area of 149,558,902 square meters, more or less.

Bounded on the NE., by public land; on the SE., by proposed national highway (30.00 m. wide); on the SW., by lots Nos. 1 and 3 of this survey; and on the NW., by lot 3 of this survey and public land.

Lot 3.—Beginning at a point marked 1 on plan, being N. 75° 36′ W., 14,914.83 m. from B.L.L.M. 2, barrio of Panacan, municipality of Aborlan; thence N. 59° 52′ E., 237.08 m. to point 2; thence N. 72° 10′ E., 679.16 m. to point 3; thence N. 02° 57′ E., 1,190.75 m. to point 4; thence N. 33° 21′ E., 846.10 m. to point 5; thence N. 55° 58′ E., 902.86 m. to point 6; thence N. 62° 26′ E., 899.58 m. to point 7; thence N. 81° 54′ E., 2,236.90 m. to point 8; thence N. 38° 23′ E., 467.24 m. to point 9; thence N. 73° 20′ E., 1,348.41 m. to point 10; thence N. 37° 20′ E., 1,906.87 m. to point 11; thence N. 52° 43′ E., 1,180.35 m. to point 12; thence N. 38° 19′ E., 861.14 m. to point 13; thence N. 34° 07′ E., 957.92 m. to point 14; thence N. 24° 47′ E., 1,328.62 m. to point 15; thence N. 25° 12′ E., 980.48 m. to point 16; thence N. 49° 22′ E., 904.42 m. to point 17; thence N. 32° 23′ E., 540.02 m. to point 18; thence N. 48° 19′ E., 463.21 m. to point 19; thence N. 58° 59′ E., 938.28 m. to point 20; thence S. 84° 54′ E., 798.62 m. to point 21; thence S. 40° 09′ W., 489.33 m. to point 22; thence S. 15° 54′ W., 302.88 m. to point 23; thence S. 03° 07′ W., 509.52 m. to point 24; thence S. 06° 57′ W., 495.81 m. to point 25; thence S. 24° 24′ W., 655.64 m. to point 26; thence S. 06° 33′ W., 547.82 m. to point 27; thence S. 01° 08′ E., 755.96 m. to point 28; thence S. 07° 34′ E., 579.68 m. to point 29; thence S. 00° 50′ W., 439.95 m. to point 30; thence S. 03° 27′ E., 418.70 m. to point 31; thence S. 06° 02′ E., 564.50 m. to point 32; thence S. 06° 23′ E., 922.38 m. to point 33; thence S. 03° 50′ W., 623.78 m. to point 34; thence S. 16° 17′ W., 860.18 m. to point 35; thence S. 32° 38′ W., 702.88 m. to point 36; thence S. 35° 23′ W., 613.20 m. to point 37; thence S. 33° 05′ W., 821.44 m. to point 38; thence S. 23° 07′ W., 680. 32 m. to point 39; thence S. 63° 34′ W., 786.24 m. to point 40; thence S. 80° 52′ W., 430.34 m. to point 41; thence S. 87° 06′ W., 597.94 m. to point 42; thence S. 82° 16′ W., 516.92 m. to point 43; thence S. 26° 46′ E., 470.01 m. to point 44; thence S. 24° 42′ W., 454.08 m. to point 45; thence S. 27° 42′ W., 527.19 m. to point 46; thence S. 02° 18′ E., 220.36 m. to point 47; thence S. 68° 32′ W., 500.69 m. to point 48; thence N. 87° 58′ W., 528.81 m. to point 49; thence S. 60° 04′ W., 354.86 m. to point 50; thence S. 27° 48′ W., 233.41 m. to point 51; thence S. 11° 21′ W., 458.79 m. to point 52; thence S. 70° 08′ W., 1,000.65 m. to point 53; thence S. 46° 31′ W., 600.54 m. to point 54; thence S. 33° 26′ W., 428.03 m. to point 55; thence S. 55° 23′ W., 276.17 m. to point 56; thence S. 54° 21′ W., 287.36 m. to point 57; thence S. 38° 10′ W., 299.35 m. to point 58; thence S. 43° 33′ W., 456.18 m. to point 59; thence S. 37° 29′ W., 267.82 m. to point 60; thence S. 45° 37′ W., 186.87 m. to point 61; thence S. 22° 15′ W., 427.56 m. to point 62; thence S. 70° 46′ W., 452.20 m. to point 63; thence S. 80° 15′ W., 361.15 m. to point 64; thence S. 21° 09′ W., 430.75 m. to point 65; thence N. 78° 12′ W., 420.14 m. to point 66; thence N. 20° 02′ W., 71.50 m. to point 67; thence N. 56° 25′ W., 108.55 m. to point 68; thence N. 21° 17′ W., 392.13 m. to point 69; thence N. 53° 52′ W., 535.94 m. to point 70; thence N. 13° 14′ W., 679.40 m. to point 71; thence N. 07° 46′ W., 649.87 m. to point 72; thence N. 30° 48′ W., 269.94 m. to point 73; thence N. 45° 56′ W., 765.14 m. to point 74; thence N. 55° 12′ W., 636.00 m. to point 75; thence N. 30° 21′ W., 997.70 m. to point 76; thence N. 29° 10′ W., 426.15 m. to point 77; thence N. 65° 15′ W., 262.22 m. to point 78; thence N. 16° 37′ W., 278.36 m. to the point of beginning, containing an area of 87,659,237 square meters, more or less.

Bounded on the N. by public land, on the E. by lot No. 2, on the S. by lot No. 2 and Katubugan River and on the W. by public land.

The total combined area of the three lots is 253,807,989 square meters, more or less. These three lots combined as one lot, is bounded on the north, by public land, on the southeast, by the proposed national road, on the south and on the west, by public land. Bearings true. Declination 1° 20′ E.

Points referred to are marked on the plan now in progress of preparation for submittal for verification and approval of the Bureau of Lands. Surveyed January 23 to March 24, 1950, by the Certeza Surveying Company, Inc.

In witness whereof, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 29th day of June, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fourth.

[SEAL]

ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 120

AUTHORIZING THE PEOPLE'S SURETY AND INSURANCE CO., INC. TO BECOME A SURETY UPON OFFICIAL RECOGNIZANCES, STIPULATIONS, BONDS AND UNDERTAKINGS.

WHEREAS, section 1 of Act No. 536, as amended by Act No. 2206, provides that whenever any recognizance, stipulation, bond or undertaking conditioned for the faithful performance of any duty or of any contract made with any public authority, national, provincial, municipal, or otherwise, or of any undertaking, or for the doing or refraining from doing anything in such recognizance, stipulation, bond or undertaking specified, is, by the laws of the Philippines or by the regulations or resolutions of any public authority therein, required or permitted to be given with one surety or with two or more sureties, the execution of the same or the guaranteeing of the performance of the condition thereof shall be sufficient when executed or guaranteed solely by any corporation organized under the laws of the Philippines, having power to guarantee the fidelity of persons holding positions of public or private trust and to execute and guarantee bonds or under-

takings in judicial proceedings and to agree to the faithful performances of any contract or undertaking made with any public authority;

WHEREAS, said section further provides, that no head of department, court, judge, officer, board, or body executive, legislative or judicial shall approve or accept any corporation as surety on any recognizance, stipulation, bond, contract, or undertaking, unless such corporation has been authorized to do business in the Philippines in the manner provided by the provisions of said Act No. 536, as amended, nor unless such corporation has by contract with the Government of the Philippines been authorized to become a surety upon official recognizances, stipulations, bonds, and undertakings; and

WHEREAS, The People's Surety & Insurance Co., Inc. is a domestic corporation organized and existing under the laws of the Republic of the Philippines and fulfills the conditions prescribed by said Act No. 536, as amended;

NOW THEREFORE, I, Elpidio Quirino, President of the Philippines, by virtue of the powers in me vested by law, do hereby authorize the People's Surety & Insurance Co., Inc., to become a surety upon official recognizances, stipulations, bonds and undertaking in such manner and under such conditions as are provided by law, except that the total amount of immigration bonds, that it may issue shall not, at any time, exceed its admitted assets.

Done in the City of Manila, this 6th day of June, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fourth.

ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 121

LIFTING THE SUSPENSION OF EXECUTIVE ORDER NO. 157, DATED JULY 10, 1948, AS AMENDED BY EXECUTIVE ORDER NO. 161, DATED AUGUST 12, 1948.

The Committee created under Administrative Order No. 69, dated September 3, 1948, having submitted its report on the boundary dispute between the provinces of Isabela and Nueva Vizcaya, arising from the enforcement of Executive Order No. 157, dated July 10, 1948, as amended by

Executive Order No. 161, dated August 12, 1948, which fix the boundaries of the latter province pursuant to the provisions of Republic Act No. 236, I, Elpidio Quirino, President of the Philippines, by virtue of the powers vested in me by law, do hereby lift the suspension by Administrative Order No. 69 of said Executive Order No. 157, as amended by Executive Order No. 161, and continue in full force and effect the provisions of the latter.

Done in the City of Manila, this 20th day of June, in the year of Our Lord, nineteen hundred and fifty, and of the Independence of the Philippines, the fourth.

ELPIDIO QUIRINO
President of the Philippines

By the President:

TEODORO EVANGELISTA
Executive Secretary

REPUBLIC ACTS

Enacted during the First Session of the Second Congress, Republic of the Philippines, from January 23 to May 18, 1950

S. No. 66

[REPUBLIC ACT NO. 428]

AN ACT TO DECLARE ILLEGAL THE POSSESSION, SALE OR DISTRIBUTION OF FISH OR OTHER AQUATIC ANIMALS STUPEFIED, DISABLED OR KILLED BY MEANS OF DYNAMITE OR OTHER EXPLOSIVE OR TOXIC SUBSTANCES AND PROVIDING PENALTIES THEREFOR.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. It shall be unlawful for any person knowingly to possess, sell or distribute, in any place and manner, fish or other aquatic animals stupefied, disabled or killed by means of dynamite or other explosive or toxic substances.

SEC. 2. Any person violating the provision of section one hereof shall be penalized as follows:

(*a*) If the total value of all the fish or other aquatic animals in possession, sale or distribution does not exceed one hundred pesos, by a fine of not less than fifty pesos nor more than two hundred pesos, or by imprisonment of not less than one month nor more than six months, or by both such fine and imprisonment;

(*b*) If the total value of all the fish or other aquatic animals in possession, sale or distribution exceeds one hundred pesos, by a fine of not less than two hundred pesos nor more than five hundred pesos, or by imprisonment of not less than six months nor more than five years, or by both such fine and imprisonment.

SEC. 3. Any person who should buy fish or other aquatic animals, knowing the same to have been stupefied, disabled or killed in violation of this Act, shall be punished under section two hereof, unless he denounces the act to competent authorities in which case he shall be exempted from criminal liability.

Any person who should buy fish or other aquatic animals stupefied, disabled or killed in violation of this Act, shall, upon discovering said violation, denounce the same to the proper authorities who shall forthwith take the necessary steps leading to the corresponding investigation and prosecution of the offender under this Act.

SEC. 4. Any policeman, peace officer, sanitary inspector. or employee of the Bureau of Health, or any person in authority who, having acquired knowledge of any violation of this Act, by denunciation or otherwise, should without just cause, fail to take the necessary steps leading to the investigation and prosecution of the offense, or should hinder or unnecessarily delay said investigation and pros-

ecution, shall be removed or suspended from office and punished under section two hereof.

SEC. 5. For the purposes of this Act the words "fish or other aquatic animals" shall be interpreted to include fish or aquatic animals that may have been dried, refrigerated, canned or otherwise processed.

SEC. 6. The president of the sanitary division of the locality or the sanitary inspector or any representative of the Bureau of Health duly authorized therefor, immediately upon request of any interested party, shall examine the fish or aquatic animals alleged to have been stupefied, disabled or killed in violation of this Act, and his report shall be submitted to competent court as expert opinion.

SEC. 7. The Department of Health with the concurrence of the Department of Agriculture and Natural Resources shall issue instructions and regulations to implement the provisions of this Act, particularly the preceding section.

SEC. 8. All laws inconsistent with this Act are hereby repealed.

SEC. 9. This Act shall take effect upon its approval.

Approved, June 7, 1950.

H. No. 49

[REPUBLIC ACT NO. 429]

AN ACT CREATING THE POSITIONS OF VICE-MAYOR AND ASSISTANT CITY ATTORNEY IN ORMOC CITY, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NUMBERED ONE HUNDRED AND SEVENTY-NINE.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. A new section, to be known as section seven-A, is hereby inserted between sections seven and eight of Republic Act Numbered One hundred seventy-nine to read as follows:

"SEC. 7-A. *The Vice-Mayor.*—There shall be a Vice-Mayor who shall be appointed by the President of the Philippines, with the consent of the Commission on Appointments, and who shall hold office at the pleasure of the President. He shall act as Mayor and perform the duties and exercise the powers of the Mayor in the event of sickness, absence, or other permanent or temporary incapacity of the Mayor, and he shall, when acting as Mayor, be entitled to the salary and allowances of the Mayor.

"The Vice-Mayor, when not acting as Mayor, shall be *ex officio* member of the Municipal Board and shall receive twenty pesos for each day of attendance of the session of the board."

SEC. 2. Section eight of Republic Act Numbered One hundred and seventy-nine is hereby amended to read as follows:

"SEC. 8. *The Acting Mayor.*—In the event of sickness, absence, or other temporary incapacity of the Mayor and Vice-Mayor, or in the event of a vacancy in the positions of Mayor and Vice-Mayor, the City Treasurer shall perform the duties of the Mayor until said office shall be filled in

accordance with law. If, for any reason, the duties of the office of the Mayor cannot be performed by the City Treasurer, said duties shall be performed by the City Engineer. In case of the incapacity of the officials mentioned above to perform the duties of the Mayor, the President shall appoint or designate one. The Acting Mayor shall have the same powers and duties as the Mayor, and, if one appointed or designated is other than a government official, he shall receive the same compensation."

SEC. 3. The first paragraph of section eleven of Republic Act Numbered One hundred seventy-nine is hereby amended to read as follows:

"SEC. 11. *Constitution and organization of the Municipal Board—Compensation of members thereof.*—The Municipal Board shall be the legislative body of the city and shall be composed of the Mayor, who shall be its presiding officer, the Vice-Mayor, as *ex officio* member, and eight councilors elected at large by popular vote during every election for provincial and municipal officials in conformity with the provisions of the Election Code. In case of sickness, absence, suspension or other temporary disability of any member of the Board, or if necessary to maintain a quorum, the President of the Philippines may appoint a temporary substitute who shall possess all the rights and perform all the duties of a member of the Board until the return to duty of the regular incumbent.

"If any member of the Municipal Board should be candidate for office in any election, he shall be incompetent to act with the Board in the discharge of the duties conferred upon it relative to election matters, and in such case the other members of the Board shall discharge said duties without his assistance, or they may choose some disinterested elector of the city to act with the Board in such matters in his stead.

"The members of the Municipal Board, who are not officers or employees of the Government receiving a fixed compensation or salary from public funds, shall receive ten pesos for each day of attendance of the session of the Board."

SEC. 4. Section fourteen of Republic Act Numbered One hundred seventy-nine is hereby amended to read as follows:

"SEC. 14. *Method of transacting business by the Board—Veto—Authentication and publication of ordinances.*—Unless the Secretary of the Interior orders otherwise, the Board shall hold one ordinary session for the transaction of business during each week on a day which it shall fix by resolution, and such extraordinary sessions, not exceeding thirty during any one year, as may be called by the Mayor. It shall sit with open doors, unless otherwise ordered by an affirmative vote of six members. It shall keep a record of its proceedings and determine its rules of procedure not herein set forth. Six members of the Board shall constitute a *quorum* for the transaction of business. But a smaller number may adjourn from day to day and may compel immediate attendance of any member absent without good cause by issuing to the police of the city an order for his arrest and production at the session under such penalties as shall have been previously prescribed by ordinance. Six affirmative votes

shall be necessary for the passage of any ordinance, or of any resolution or motion directing the payment of money or creating liability, but other measures shall prevail upon the majority votes of the members present at any meeting duly called and held. The ayes and nays shall be taken and recorded upon the passage of all ordinances, upon all resolutions or motions directing the payment of money or creating liability, and at the request of any member, upon any other resolution or motion. Each approved ordinance, resolution or motion shall be sealed with the seal of the Board, signed by the presiding officer and the secretary of the Board and recorded in a book for the purpose and shall, on the day following its passage, be posted by the secretary at the main entrance to the City Hall, and shall take effect and be in force on and after the tenth day following its passage unless otherwise stated in said ordinance, resolution or motion or vetoed by the Mayor as hereinafter provided. A vetoed ordinance, if repassed, shall take effect ten days after the veto is overriden by the required votes unless otherwise stated in the ordinance or again disapproved by the Mayor within said time.

"Each ordinance and each resolution or motion directing the payment of money or creating liability enacted or adopted by the Board shall be forwarded to the Mayor for his approval. Within ten days after the receipt of the ordinance, resolution, or motion, the Mayor shall return it with his approval or veto. If he does not return it within that time, it shall be deemed to be approved. If he returns it with his veto, his reasons therefor in writing shall accompany it. It may then be again enacted by the affirmative votes of seven members of the Board, and again forwarded to the Mayor for his approval, and if within ten days after its receipt he does not again return it with his veto, it shall be deemed to be approved. If within said time he again returns it with his veto, it shall be forwarded forthwith to the Secretary of the Interior for his approval or disapproval, which shall be final. The Mayor shall have the power to veto any particular item or items of an appropriation ordinance, or of an ordinance, resolution or motion directing the payment of money or creating liability, but the veto shall not affect the item or items of which he does not object. The item or items objected to shall not take effect except in the manner heretofore provided in this section as to ordinances, resolutions, and motions returned to the Board with his veto, but should an item or items in an appropriation ordinance be disapproved by the Mayor, the corresponding item or items in the appropriation ordinance of the previous year shall be deemed restored unless otherwise expressly directed in the veto.

"The Secretary of the Interior shall have full power to disapprove directly, in whole or in part, any ordinance, resolution or motion of the Municipal Board if he finds said ordinance, resolution or motion or parts thereof, beyond the powers conferred upon the Board."

SEC. 5. The first paragraph of section nineteen of Republic Act Numbered One hundred and seventy-nine is hereby amended to read as follows:

"SEC. 19. *Appointment and removal of officials and employees.*—The President of the Philippines shall appoint

with the consent of the Commission on Appointments of the Congress of the Philippines, the judge and auxiliary judge of the municipal court, the city treasurer, the city engineer, the city attorney, the assistant city attorney, the chief of police, the chief of the fire department, and the other heads of such city department as may be created. Except the judge and the auxiliary judge of the municipal court, said officers shall hold office at the pleasure of the President."

SEC. 6. The first paragraph of section twenty-four of Republic Act Numbered One hundred and seventy-nine is hereby amended to read as follows:

"SEC. 24. *The City Attorney and Assistant City Attorney—Their power and duties.*—The City Attorney shall be the chief legal adviser of the City. The City Attorney and the Assistant City Attorney shall receive a salary of not exceeding three thousand pesos and two thousand four hundred pesos, *per annum*, respectively. The City Attorney shall have the following powers and duties:"

SEC. 7. This Act shall take effect upon its approval.

Approved, June 7, 1950.

H. No. 58

[REPUBLIC ACT No. 430]

AN ACT AUTHORIZING THE APPROPRIATION OF THE SUM OF ONE HUNDRED AND FIFTY THOUSAND PESOS FOR THE ESTABLISHMENT OF A CERAMIC PLANT IN TIWI, ALBAY, AND FOR OTHER PURPOSES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The sum of one hundred and fifty thousand pesos or so much thereof as may be necessary is hereby authorized to be appropriated out of the General Funds in the National Treasury not otherwise appropriated, for the establishment of a ceramic plant in Tiwi, Albay, including the purchase of land, equipment, materials, supplies, and the construction of buildings and shops in connection with the work; said project to be undertaken by the Institute of Science.

SEC. 2. The ceramic plant shall study, manufacture and sell ceramic products such as bricks, tiles, pipes, tableware, dinnerware, insulators, and others. The proceeds of the sale shall be used as a revolving fund for the operation of the plant, improvement of the products, and other studies connected with the project.

SEC. 3. Should the plant be sold to private individuals or corporations, the proceeds shall be employed for the establishment of similar plant or plants in other regions to be recommended by the Director, Institute of Science and approved by the President of the Philippines.

SEC. 4. This Act shall take effect upon its approval.

Approved, June 7, 1950.

H. No. 187

[REPUBLIC ACT NO. 431]

AN ACT TO AMEND CERTAIN SECTIONS OF REPUBLIC ACT NUMBERED TWO HUNDRED AND NINETY-SIX, ENTITLED "THE JUDICIARY ACT OF 1948."

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Sections seven and eight of the Judiciary Act of 1948 are hereby amended to read as follows:

"SEC. 7. *Disbursement of funds for judiciary establishment.*—Except as otherwise specially provided, national funds available for the judiciary establishment shall be disbursed by the disbursing officer of the Department of Justice.

"SEC. 8. *Annual report of clerks of courts.*—The clerk of the Supreme Court, the clerk of the Court of Appeals, and all clerks of Courts of First Instance shall make annual reports to the Secretary of Justice, of such scope and in such form as shall be by the latter prescribed, concerning the business done in their respective courts during the year."

SEC. 2. Section thirty-eight of the Judiciary Act of 1948 is amended to read as follows:

"SEC. 38. *Applicability of certain provisions of the Revised Administrative Code to Court of Appeals.*—The provisions of sections ten, thirteen, fourteen, sixteen, eighteen, nineteen, twenty, twenty-one, twenty-two, and twenty-three of this Act, and eigthy-nine of the Revised Administrative Code, shall be applicable to the Court of Appeals, in so far as they may be of possible application."

SEC. 3. The second paragraph of section forty-nine of the same Act is amended to read as follows:

"The First Judicial District shall consist of the Provinces of Cagayan, Batanes, Isabela, and Nueva Vizcaya, and the Subprovince of Ifugao;"

SEC. 4. Section sixty of the Judiciary Act of 1948 is hereby amended to read as follows:

"SEC. 60. *Division of business among branches of Court of Sixth District.*—In the Court of First Instance of the Sixth Judicial District all cases relative to the registration of real estate in the City of Manila and all matters involving the exercise of the powers conferred upon the fourth branch of said court or the judge thereof in reference to the registration of land shall be within the exclusive jurisdiction of said fourth branch and shall go or be assigned thereto for disposition according to law. All other business appertaining to the Court of First Instance of said district shall be equitably distributed among the judges of the ten branches, in such manner as shall be agreed upon by the judges themselves; but in proceeding to such distribution of the ordinary cases a smaller share shall be assigned to the fourth branch, due account being taken of the amount of land registration work which may be required of this branch.

"Nothing contained in this section and in section sixty-three shall be construed to prevent the temporary desig-

nation of judges to act in this district in accordance with section fifty-one."

SEC. 5. This Act shall take effect upon its approval.

Approved, June 7, 1950.

H. No. 437

[REPUBLIC ACT No. 432]

AN ACT TO CHANGE THE NAME OF NOVALICHES STREET IN THE CITY OF MANILA TO PADILLA STREET, IN HONOR OF DOCTOR NICANOR PADILLA, FILIPINO PATRIOT, REVOLUTIONARY HERO AND PIONEER PHYSICIAN.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The name of Novaliches Street in the City of Manila is changed to Padilla Street, in honor of Doctor Nicanor Padilla, Filipino patriot, revolutionary hero and pioneer physician.

SEC. 2. This Act shall take effect upon its approval.

Approved, June 7, 1950.

H. No. 488

[REPUBLIC ACT No. 433]

AN ACT TRANSFERRING FROM THE ADMINISTRATIVE CONTROL AND SUPERVISION OF THE RESPECTIVE HEADS OF THE DIFFERENT DEPARTMENTS, BUREAUS, OFFICES AND INSTRUMENTALITIES OF THE NATIONAL GOVERNMENT, INCLUDING THE SUPREME COURT, THE COURT OF APPEALS, THE COMMISSION ON ELECTIONS, AND THE UNIVERSITY OF THE PHILIPPINES, THE FUNCTION OF PREPARING AND KEEPING THE ACCOUNTS OF THE SAID DEPARTMENTS, BUREAUS, OFFICES AND INSTRUMENTALITIES, TO THE BUDGET COMMISSION.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

Section 1. Except as herein otherwise provided, the function of preparing and keeping the accounts of the different departments, bureaus, offices, and dependencies or instrumentalities of the National Government, including the Supreme Court, the Court of Appeals, the Commission on Elections, and the University of the Philippines, and such other duties as are incidental to the said function, which are now being performed under the administrative control and supervision of the respective heads of the said departments, bureaus, offices and instrumentalities, pursuant to the provisions of Executive Order Numbered Forty-three, dated February seven, nineteen hundred and forty-seven, are hereby transferred, together with their corresponding appropriations, personnel, books, records, equipment and other property, to the Budget Commission.

SEC. 2. The Commissioner of the Budget and the bureau head or chief of office concerned are hereby authorized,

with the approval of the President, to segregate immediately the appropriations, personnel, books, records, equipment, and other property provided for the present accounting offices and to determine those which shall be transferred to the Budget Commission.

SEC. 3. The services hereby transferred shall operate in suitable quarters furnished therefor by the corresponding departments, bureaus, offices, or dependencies and shall be under the charge of accounting officers appointed or designated by the Commissioner of the Budget. It shall be the duty of said accounting officers to manage such service for the corresponding head of department, or chief of bureau, office, or dependency; advise him of the trend of business affairs thereof; render such reports and statements as may be required of him by the Commissioner of the Budget, the Auditor General, or the head of the department, bureau, office, or dependency concerned; and perform such other duties as the Commissioner of the Budget may prescribe.

SEC. 4. The provisions of Executive Order Numbered Forty-three, dated February seven, nineteen hundred and forty-seven, and all other laws, rules and orders which are inconsistent herewith are hereby repealed or modified accordingly.

SEC. 5. This Act shall take effect upon its approval.

Approved, June 7, 1950.

H. No. 503

[REPUBLIC ACT NO. 434]

AN ACT AMENDING SECTION TWO HUNDRED SIXTY-SEVEN OF COMMONWEALTH ACT NUMBERED FOUR HUNDRED AND SIXTY-SIX, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Section two hundred and sixty-seven of Commonwealth Act Numbered Four hundred and sixty-six, otherwise known as the National Internal Revenue Code, is amended to read as follows:

"SEC. 267. *Surcharges for illegal cutting and removal of forest products or for delinquency.*—Where forest products are unlawfully cut or gathered in any public forest without license or, if under license, in violation of the terms thereof, the charges on such products shall be increased by three hundred *per centum*. If forest products shall be removed without invoice, or upon removal, shall be discharged without permit from boat, car, cart, or other means of transportation, the charges shall be increased by twenty-five *per centum;* and if in any case, the proper charges upon forest products are not paid within sixty days after the same shall be due and payable, such charges shall be increased by twenty-five *per centum: Provided, however,* That the Collector of Internal Revenue may, in meritorious cases, waive the surcharge of twenty-five *per centum* for discharging without permit or grant an extension of time not exceeding thirty days for the payment of the forest charges without surcharge."

SEC. 2. This Act shall take effect upon its approval.

Approved, June 7, 1950.

H. No. 778

[REPUBLIC ACT No. 435]

AN ACT TO CHANGE THE NAME OF THE MUNICIPALITY OF NEW AYUQUITAN, PROVINCE OF NEGROS ORIENTAL, TO "AMLAN" AND THE NAME OF BARRIO OLD AYUQUITAN TO "AYUQUITAN."

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The name of the municipality of New Ayuquitan, Province of Negros Oriental is hereby changed to "Amlan", and the name of barrio Old Ayuquitan of said municipality and province is hereby changed to that of "Ayuquitan".

SEC. 2. This Act shall take effect upon its approval.

Approved, June 7, 1950.

H. No. 799

[REPUBLIC ACT No. 436]

AN ACT TO TAX ALL PUBLIC LANDS HELD BY PRIVATE INDIVIDUALS OR BY CORPORATIONS, OR OTHER ASSOCIATIONS, WHETHER IN THE NATURE OF HOMESTEADS, CONCESSIONS OR CONTRACTS, AS TO ORDINARY TAXES, THEREBY AMENDING SECTION ONE HUNDRED AND FIFTEEN OF COMMONWEALTH ACT NUMBERED ONE HUNDRED AND FORTY-ONE.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Section one hundred and fifteen of Commonwealth Act Numbered One hundred and forty-one is hereby amended to read as follows:

"SEC. 115. All lands granted by virtue of this Act, including homesteads upon which final proof has not been made or approved, shall, even though and while the title remains in the State, be subject to the ordinary taxes, which shall be paid by the grantee or the applicant, beginning with the year next following the one in which the homestead application has been filed, or the concession has been approved, or the contract has been signed, as the case may be, on the basis of the value fixed in such filing, approval or signing of the application, concession or contract."

SEC. 2. This Act shall take effect upon its approval.

Approved, June 7, 1950.

H. No. 884

[REPUBLIC ACT No. 437]

AN ACT CHANGING THE NAME OF RIZAL CITY TO PASAY CITY

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The name of Rizal City created by Republic Act Numbered One hundred and eighty-three is hereby changed to Pasay City.

SEC. 2. Whenever the words "Rizal City" appear in Republic Act Numbered One hundred eighty-three, and other acts or part of acts, the said words shall be understood to mean or to refer to Pasay City.

SEC. 3. This Act shall take effect upon its approval.

Approved, June 7, 1950.

H. No. 905

[REPUBLIC ACT NO. 438]

AN ACT TO AMEND PARAGRAPH (*a*) OF SECTION TWO HUNDRED ONE AND SECTION THREE HUNDRED THIRTY-FOUR OF COMMONWEALTH ACT NUMBERED FOUR HUNDRED SIXTY-SIX, AS AMENDED, KNOWN AS THE NATIONAL INTERNAL REVENUE CODE.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Paragraph (*a*) of section two hundred one of Commonwealth Act Numbered Four hundred sixty-six, known as the National Internal Revenue Code, is hereby amended to read as follows:

"SEC. 201. (*a*) Lawyers, medical practitioners, land surveyors, architects, certified public accountants, civil, electrical, chemical, mechanical or mining engineers, insurance agents and sub-agents, veterinarians, dental surgeons, opticians, professional appraisers or connoisseurs of tobacco and other domestic or foreign products, licensed ship masters, and marine chief engineers, fifty pesos."

SEC. 2. Section three hundred thirty-four of Commonwealth Act Numbered Four hundred sixty-six, known as the National Internal Revenue Code, is hereby amended to read as follows:

"SEC. 334. *Corporations, companies, partnerships or persons required to keep journal and ledger.*—All corporations, companies, partnerships or persons required by law to pay internal revenue taxes shall keep a journal and a ledger, or their equivalents: *Provided, however,* That those whose gross quarterly sales, earnings, receipts or output do not exceed five thousand pesos shall keep and use a simplified set of bookkeeping records recommended by the Collector of Internal Revenue and approved by the Secretary of Finance."

SEC. 3. This Act shall take effect upon its approval.

Approved, June 7, 1950.

H. No. 922

[REPUBLIC ACT NO. 439]

AN ACT AUTHORIZING AMBASSADOR CARLOS P. ROMULO TO ACCEPT THE DECORATION KNOWN AS THE "GRAND CROSS OF THE ORDER OF CARLOS MANUEL DE CESPEDES" CONFERRED UPON HIM BY THE NATIONAL GOVERNMENT OF THE REPUBLIC OF CUBA.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. For the purpose of promoting international friendship and understanding, Ambassador Carlos P.

Romulo, Chief of the Philippine Mission to the United Nations, is hereby authorized to accept the decoration known as the "Grand Cross of the Order of Carlos Manuel de Cespedes," conferred upon him by the National Government of the Republic of Cuba, and to wear the corresponding insignia of the Order.

SEC. 2. This Act shall take effect upon its approval.

Approved, June 7, 1950.

H. No. 993

[REPUBLIC ACT No. 440]

AN ACT TO AMEND SECTION FORTY-FOUR OF ACT NUMBERED FOUR HUNDRED AND NINETY-SIX, OTHERWISE KNOWN AS THE LAND REGISTRATION ACT.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Section forty-four of Act Numbered Four hundred and ninety-six, is hereby amended to read as follows:

"SEC. 44. A registered owner of several distinct parcels of land embraced in a single certificate of title desiring to have in lieu thereof several new certificates each containing one or more parcels, may file a petition for that purpose with the register of deeds, and this officer, upon the surrender of the owner's duplicate, shall cancel it and its original and issue in lieu thereof the desired new certificates. So a registered owner of several distinct parcels of land in separate certificates desiring to have in lieu thereof a single certificate for the whole land or several certificates for the different portions thereof, may file a petition with the register of deeds, and this officer, upon the surrender of the owner's duplicates, shall cancel them and their originals and issue in lieu thereof new ones as requested.

"Any owner subdividing a tract of registered land into lots shall file with the Chief of the General Land Registration Office a subdivision plan of such land on which all boundaries, streets and passageways, if any, shall be distinctly and accurately delineated. If no streets or passageways are indicated or no alteration of the perimeter of the land is made, and it appears that the land as subdivided does not need of them and that the plan has been approved by the Chief of the General Land Registration Office, or by the Director of Lands as provided in section fifty-eight of this Act, the register of deeds may issue new certificates of title for any lot in accordance with said subdivision plan. If there are streets and/or passageways, no new certificates shall be issued until said plan has been approved by the Court of First Instance of the province or city in which the land is situated. A petition for that purpose shall be filed by the registered owner, and the court after notice and hearing, and after considering the report of the Chief of the General Land Registration Office, may grant the petition, subject to the condition, which shall be noted on the proper certificate, that no portion of any street or passageway so delineated on the plan shall be closed or otherwise disposed of by the registered owner without approval

of the court first had, or may render such judgment as justice and equity may require.

"A registered owner desiring to consolidate several lots into one or more, requiring new technical description, shall file with the Chief of the General Land Registration Office a plan on which shall be shown the lots to be affected, as they are before, and as they will appear after the consolidation. Upon the surrender of the owners duplicate certificate or certificates and the receipt of proper authority from the Chief of the General Land Registration Office, the register of deeds concerned shall cancel the old certificates and issue a new one for the consolidated lot or lots."

SEC. 2. This Act shall take effect upon its approval.

Approved, June 7, 1950.

H. No. 1013

[REPUBLIC ACT NO. 441]

AN ACT TO EXTEND THE PERIOD FOR FILING PETITIONS FOR THE RECONSTITUTION OF RECORDS OF PENDING JUDICIAL PROCEEDINGS DESTROYED DURING THE LAST WAR.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION. 1. Notwithstanding the provisions of Act Numbered Three thousand one hundred and ten, the party or parties interested in any case pending in the courts the records of which have been destroyed by reason of the last Pacific war may file a petition for the reconstitution of such records within one year from the date of the approval of this Act.

SEC. 2. The procedure, requirements and all other incidents of such reconstitution shall be governed by the provisions of Act Numbered Three thousand one hundred and ten.

SEC. 3. This Act shall take effect upon its approval.

Approved, June 7, 1950.

H. No. 1038

[REPUBLIC ACT NO. 442]

AN ACT GRANTING THE VISAYAN ELECTRIC COMPANY, S.A. A FRANCHISE FOR AN ELECTRIC LIGHT, HEAT AND POWER SYSTEM IN THE MUNICIPALITY OF DIPOLOG, PROVINCE OF ZAMBOANGA.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Subject to the terms and conditions established in Act Numbered Thirty-six hundred and thirty-six, as amended by Commonwealth Act Numbered One hundred and thirty-two, and the provisions of the Constitution, there is granted to the Visayan Electric Co., S. A., for a period of twenty-five years from the approval of this Act, the right, privilege, and authority to construct, maintain, and operate an electric light, heat and power plant for the purpose of generating and distributing electric light, heat,

and/or power for sale within the municipality of Dipolog, Province of Zamboanga.

SEC. 2. It is expressly provided that in the event the Government should desire to maintain and operate for itself the plant and enterprise herein authorized, the grantee shall surrender its franchise and will turn over to the Government all serviceable equipment therein, at cost, less reasonable depreciation.

SEC. 3. This Act shall take effect upon its approval.

Approved, June 7, 1950.

H. No. 1039

[REPUBLIC ACT NO. 443]

AN ACT GRANTING THE VISAYAN ELECTRIC CO., S.A. A FRANCHISE FOR AN ELECTRIC LIGHT, HEAT AND POWER SYSTEM IN THE MUNICIPALITY OF BOGO, PROVINCE OF CEBU.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Subject to the terms and conditions established in Act Numbered Thirty-six hundred and thirty-six, as amended by Commonwealth Act Numbered One hundred and thirty-two, and to the provisions of the Constitution, there is granted to the Visayan Electric Co., S. A., for a period of twenty-five years from the approval of this Act, the right, privilege, and authority to construct, maintain, and operate an electric light, heat and power plant for the purpose of generating and distributing electric light, heat, and/or power for sale within the municipality of Bogo, Province of Cebu.

SEC. 2. It is expressly provided that in the event the Government should desire to maintain and operate for itself the plant and enterprise herein authorized, the grantee shall surrender its franchise and will turn over to the Government all serviceable equipment therein, at cost less reasonable depreciation.

SEC. 3. This Act shall take effect upon its approval.

Approved, June 7, 1950.

H. No. 1040

[REPUBLIC ACT NO. 444]

AN ACT GRANTING THE CARCAR ELECTRIC AND ICE PLANT CO., INC. A FRANCHISE FOR AN ELECTRIC LIGHT, HEAT AND POWER SYSTEM IN THE MUNICIPALITY OF CARCAR, PROVINCE OF CEBU.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Subject to the terms and conditions established in Act Numbered Thirty-six hundred and thirty-six, as amended by Commonwealth Act Numbered One hundred and thirty-two, and to the provisions of the Constitution, there is granted to the Carcar Electric and Ice Plant Co. Inc., for a period of twenty-five years from the approval of this Act, the right, privilege, and authority to construct, maintain, and operate an electric light, heat

and power plant for the purpose of generating and distributing electric light, heat and/or power for sale within the municipality of Carcar, Province of Cebu.

SEC. 2. It is expressly provided that in the event the Government should desire to maintain and operate for itself the plant and enterprise herein authorized, the grantee shall surrender its franchise and will turn over to the Government all serviceable equipment therein at cost, less reasonable depreciation.

SEC. 3. This Act shall take effect upon its approval.

Approved, June 7, 1950.

H. No. 1242

[REPUBLIC ACT NO. 445]

AN ACT TO FURTHER AMEND SECTION THREE HUNDRED AND THIRTY-SIX OF COMMONWEALTH ACT NUMBERED FOUR HUNDRED AND SIXTY-SIX, AS AMENDED BY SECTION TWELVE OF REPUBLIC ACT NUMBERED FORTY-EIGHT.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Section three hundred and thirty-six of Commonwealth Act Numbered Four hundred and sixty-six, as amended, by section twelve of Republic Act Numbered Forty-eight, is hereby further amended to read as follows:

"SEC. 336. *Language in which books are to be kept: translations.*—All such corporations, companies, partnerships, or persons shall keep the books or records mentioned in section three hundred and thirty-four hereof in a native language, English, or Spanish: *Provided, however,* That if in addition to said books or records the taxpayer keeps other books or records in a language other than a native language, English, or Spanish, he shall make a true and complete translation of all the entries in such other books or records into a native language, English, or Spanish, and the said translation must be made by the bookkeeper of such taxpayer, or, in his absence, by his manager and must be certified under oath as to its correctness by the said bookkeeper or manager, and shall form an integral part of the books of accounts aforesaid. The keeping of such books or records in any language other than a native language, English or Spanish, is hereby prohibited."

SEC. 2. This Act shall take effect upon its approval.

Approved, June 7, 1950.

S. No. 78

[REPUBLIC ACT NO. 446]

AN ACT TO AMEND SECTION ONE HUNDRED AND NINETY-FIVE OF ACT NUMBERED TWENTY-FOUR HUNDRED AND TWENTY-SEVEN, OTHERWISE KNOWN AS "THE INSURANCE ACT", AS AMENDED.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Section one hundred and ninety-five of Act Numbered Twenty-four hundred and twenty-seven as amended, is hereby further amended to read as follows:

"SEC. 195. Every insurance corporation hereafter formed or organized under the laws of the Philippines shall, if a stock corporation, have a subscribed capital stock equal to at least five hundred thousand pesos, fifty per centum of which must be paid up in cash previous to the issuance of any policy, and the residue within twelve months from the date of filing its articles of incorporation. For failure to have its capital stock paid up within the time prescribed the corporation shall not be permitted to take any new risks of any kind or character. If organized as a mutual company, in lieu of such capital stock, it must have available cash assets of at least five hundred thousand pesos above all liabilities for losses reported, expenses, taxes, legal reserve, and reinsurance of all outstanding risks.

"Any officer, official, or director of the corporation taking or authorizing the taking of any risk for the corporation in violation of the terms of this section shall be punished by imprisonment for not less than one year nor more than five years and by a fine of not less than one thousand nor more than five thousand pesos."

SEC. 2. This Act shall take effect upon its approval.

Approved, June 8, 1950.

H. No. 165

[REPUBLIC ACT NO. 447]

AN ACT TO AMEND ACT NUMBERED TWO THOUSAND FOUR HUNDRED AND TWENTY-SEVEN, OTHERWISE KNOWN AS THE INSURANCE ACT, AS AMENDED, BY INSERTING AFTER SECTION TWO HUNDRED AND TWO THEREOF, SECTIONS TWO HUNDRED AND TWO-A TO TWO HUNDRED AND TWO-E, INCLUSIVE, TO GOVERN THE WITHDRAWAL FROM THE PHILIPPINES OF FOREIGN INSURANCE COMPANIES DOING BUSINESS THEREIN AND FOR OTHER PURPOSES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Act Numbered Two thousand four hundred and twenty-seven, otherwise known as "The Insurance Act", as amended, is hereby amended by inserting after section two hundred and two thereof the following new sections:

WITHDRAWAL OF FOREIGN INSURANCE COMPANIES

"SEC. 202-A. A foreign insurance company doing business in the Philippines, upon payment of a fee of one hundred pesos and surrender to the Insurance Commissioner of its certificate of authority, may apply to withdraw from the Philippines. Such application shall be duly executed in writing, accompanied by evidence of due authority for such execution, and properly acknowledged.

"SEC. 202-B. The Insurance Commissioner shall publish the application for withdrawal daily for a period of one week in two newspapers of general circulation in the City of Manila, one in English and the other in Spanish. The expenses of such publication shall be paid by the insurance company filing such application.

"SEC. 202-C. Every foreign insurance company which withdraws from the Philippines shall, prior to such with-

drawal, discharge its liabilities to policyholders and creditors in this country. In case of its policies insuring residents of the Philippines, it shall cause the primary liabilities under such policies to be reinsured and assumed by another insurance company authorized to transact business in the Philippines. In the case of such policies as are subject to cancellation by the withdrawing company, it may cancel such policies pursuant to the terms thereof in lieu of such reinsurance and assumption of liabilities.

"SEC. 202–D. The Insurance Commissioner shall make an examination of the books and records of the withdrawing company, if, upon such examination, he finds that the insurer has no outstanding liabilities to residents of the Philippines, he shall cancel the withdrawing company's certificate of authority, if unexpired, and shall permit the insurer to withdraw. The cost and expenses of all such examination shall be paid as prescribed in section one hundred and seventy-four of Act Numbered Two thousand four hundred and twenty-seven, as amended.

"SEC. 202–E. Upon the failure of such withdrawing insurance company or its agents in the Philippines to pay the expenses of such publication within thirty days after the presentation of the bill therefor, the Insurance Commissioner shall collect such fee from the deposit furnished in accordance with the provisions of section one hundred and seventy-eight of the Insurance Act, as amended."

SEC. 2. This Act shall take effect upon its approval.

Approved, June 8, 1950.

H. No. 277

[REPUBLIC ACT NO. 448]

AN ACT GRANTING DOMICIANO B. DE JESUS A FRANCHISE FOR AN ELECTRIC LIGHT, HEAT AND POWER SYSTEM IN THE MUNICIPALITY OF AGNO, PROVINCE OF PANGASINAN.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Subject to the terms and conditions established in Act Numbered Thirty-six hundred and thirty-six as amended by Commonwealth Act Numbered One hundred and thirty-two, and to the provisions of the Constitution, there is granted to Domiciano B. de Jesus, for a period of twenty-five years from the approval of this Act, the right, privilege, and authority to construct, maintain, and operate an electric light, heat and/or power system for the purpose of generating and distributing electric light, heat and/or power for sale within the limits of the municipality of Agno, Province of Pangasinan: *Provided,* That the holder of the franchise herein granted shall start operation thereof within one and one-half years from the approval of said franchise if he is not an actual operator; and within six months if he is already a holder of a municipal franchise. Failure to comply with this requirement shall *ipso facto* cancel and void the franchise.

SEC. 2. It is expressly provided that in the event the Government should desire to maintain and operate for itself the plant and enterprise herein authorized, the grantee shall surrender its franchise and will turn over to the Government all serviceable equipment therein, at cost.

SEC. 3. This Act shall take effect upon its approval.

Approved, June 8, 1950.

H. No. 405

[REPUBLIC ACT No. 449]

AN ACT GRANTING JOSE MARIA SOLINAP A FRANCHISE FOR AN ELECTRIC LIGHT, HEAT AND POWER SYSTEM IN THE MUNICIPALITY OF DINGLE, PROVINCE OF ILOILO.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Subject to the terms and conditions established in Act Numbered Thirty-six hundred and thirty-six, as amended by Commonwealth Act Numbered One hundred and thirty-two, and to the provisions of the Constitution, there is granted to Jose Maria Solinap, for a period of twenty-five years from the approval of this Act, the right, privilege, and authority to construct, maintain, and operate an electric light, heat and power plant for the purpose of generating and distributing electric light, heat, and/or power for sale within the municipality of Dingle, Province of Iloilo: *Provided,* That the holder of the franchise herein granted shall start the operation thereof within one and a half years from the approval of said franchise.

SEC. 2. It is expressly provided that in the event the government should desire to maintain and operate for itself the plant and enterprise herein authorized, the grantee shall surrender the franchise and will turn over to the government all serviceable equipment therein, at cost.

SEC. 3. This Act shall take effect upon its approval.

Approved, June 8, 1950.

H. No. 695

[REPUBLIC ACT No. 450]

AN ACT AUTHORIZING THE PRINTING AND ISSUE OF POSTAGE STAMPS BEARING THE PICTURE OF AURORA ARAGON QUEZON TO RAISE FUNDS TO BE USED FOR AWARDING PRIZES IN A NATION-WIDE CAMPAIGN OF PLANTING FRUIT TREES BY PUPILS OF THE PUBLIC ELEMENTARY SCHOOLS.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. To raise funds for the rehabilitation of our denuded fruit tree orchards and yards all over the Philippines which will perpetuate the memory of Aurora Aragon Quezon, the Director of Posts, subject to the approval of the Department Head, is hereby authorized to order the printing and issue, for five years from the date of the approval of this Act, of postage stamps of different denominations, with face value showing the regular postage charge and the additional amount to be fixed by the said Director destined for the purpose for which issued.

SEC. 2. These postage stamps shall bear the picture of Aurora Aragon Quezon, and shall carry the inscription, "Aurora Aragon Quezon Fruit Trees Memorial."

SEC. 3. The additional sum realized from the sale of these postage stamps shall be deposited with the National Treasurer to be disbursed by the Secretary of Education

as yearly prizes to school children in the public elementary schools all over the Philippines who have planted, cared for, and produced the best fruit trees at the end of each school year.

The Secretary of Education shall issue the necessary rules and regulations for carrying out the purpose of this Act, including rules governing the organization of committees in the different municipalities which shall take charge of the campaign of planting fruit trees in their respective municipalities, the determination of the different prizes to be awarded under this Act, and the kind and number of trees to be planted by each pupil to be entitled to such prizes.

SEC. 4. This Act shall take effect upon its approval.

Approved, June 8, 1950.

H. No. 921

[REPUBLIC ACT NO. 451]

AN ACT AUTHORIZING AMBASSADOR CARLOS P. ROMULO TO ACCEPT THE DECORATION KNOWN AS THE "GRAND CROSS OF THE ORDER OF THE PHOENIX" CONFERRED UPON HIM BY THE NATIONAL GOVERNMENT OF THE KINGDOM OF GREECE.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. For the purpose of promoting international friendship and understanding, Ambassador Carlos P. Romulo, Chief of the Philippine Mission to the United Nations, is hereby authorized to accept the decoration known as the "Grand Cross of the Order of the Phoenix," conferred upon him by the National Government of the Kingdom of Greece, and to wear the corresponding insignia of the Order.

SEC. 2. This Act shall take effect upon its approval.

Approved, June 8, 1950.

H. No. 926

[REPUBLIC ACT NO. 452]

AN ACT TO GRANT TO MINDA-LINANG-LALA A FRANCHISE TO OPERATE AN ELECTRIC LIGHT, HEAT AND POWER SYSTEM IN THE MUNICIPALITY OF MALABANG, PROVINCE OF LANAO.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Subject to the terms and conditions established in Act Numbered Thirty-six hundred and thirty-six, as amended by Commonwealth Act Numbered One hundred and thirty-two, and the provisions of the Constitution, there is granted to Minda-Linang-Lala of Malabang, Lanao, for a period of twenty-five years from the approval of this Act, the right, privilege, and authority to construct, maintain, and operate an electric light, heat and power plant for the purpose of generating and distributing electric light, heat and power for sale to the public within the limits of the municipality of Malabang, Province of Lanao: *Provided,* That the holder of the franchise herein granted

shall start operation thereof within one and one-half years from the approval of said franchise if he is not an actual operator; and within six months if he is already a holder of a municipal franchise. Failure to comply with this requirement shall *ipso facto* cancel and void the franchise.

SEC. 2. It is expressly provided that in the event the Government should desire to maintain and operate for itself the plant and enterprise herein authorized, the grantee shall surrender this franchise and will turn over to the Government all serviceable equipment therein, at cost, less reasonable depreciation.

SEC. 3. This Act shall take effect upon its approval.

Approved, June 8, 1950.

H. No. 954

[REPUBLIC ACT No. 453]

AN ACT TO AMEND SECTION TWELVE HUNDRED AND TWENTY-EIGHT OF THE REVISED ADMINISTRATIVE CODE.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The last paragraph of section twelve hundred and twenty-eight of the Revised Administrative Code is hereby amended to read as follows:

"A cargo manifest shall in no case be changed or altered, except after entry of the vessel, by means of an amendment by the master, consignee, or agent thereof, under oath, and attached to the original manifest: *Provided, however,* That, after the invoice and/or entry covering an importation have been received and recorded in the office of the appraiser or any official acting as appraiser, no amendment shall be allowed, except with respect to marks."

SEC. 2. This Act shall take effect upon its approval.

Approved, June 8, 1950.

H. No. 955

[REPUBLIC ACT No. 454]

AN ACT TO AMEND SECTION THIRTEEN HUNDRED AND SIXTY-THREE, SUBSECTIONS (*f*) AND (*i*) OF THE REVISED ADMINISTRATIVE CODE, AND FOR OTHER PURPOSES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION. 1. Subsections (*f*) and (*i*) section thirteen hundred and sixty-three of the Revised Administrative Code are hereby amended to read as follows:

"(*f*) Any merchandise of prohibited importation or exportation, the importation or exportation of which is effected or attempted contrary to law, and all other merchandise which, in the opinion of the collector, have been used, are or were intended to be used as instrument in the importation or exportation of the former.

"(*i*) Any package of imported merchandise which is found by the examining officer to contain any article not specified in the invoice or entry, together with all other packages containing imported merchandise similar to those

declared in the invoice or entry to be the contents of the misdeclared package, provided the Collector of Customs is of the opinion that the omission of such article from the invoice or entry was caused with fraudulent intent."

SEC. 2. This Act shall take effect upon its approval.

Approved, June 8, 1950.

H. No. 956

[REPUBLIC ACT NO. 455]

AN ACT TO AMEND SECTIONS TWO THOUSAND SEVEN HUNDRED AND TWO, AND TWO THOUSAND SEVEN HUNDRED AND THREE OF THE REVISED ADMINISTRATIVE CODE.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Section two thousand seven hundred and two of the Revised Administrative Code is hereby amended to read as follows:

"SEC. 2702. *Unlawful importation of merchandise.*—Any person who shall fraudulently or knowingly import or bring into the Philippines, or assist in so doing, any merchandise, contrary to law, or shall receive, conceal, buy, sell, or in any manner facilitate the transportation, concealment, or sale of such merchandise after importation, knowing the same to have been imported contrary to law, shall be punished by a fine of not less than six hundred pesos but not more than five thousand pesos and by imprisonment for not less than three months nor more than two years and, if the offender is an alien, he may be subject to deportation.

"When, upon trial for a violation of this section, the defendant is shown to have or to have had possession of the merchandise in question, such possession shall be deemed sufficient evidence to authorize conviction, unless the defendant shall explain the possession to the satisfaction of the court."

SEC. 2. Section two thousand seven hundred and three of the Revised Administrative Code is hereby amended to read as follows:

"SEC. 2703. *Various fraudulent practices against customs revenues.*—Any person who makes or attempts to make any entry of imported or dutiably exported merchandise by means of any false or fraudulent invoice, declaration, affidavit, letter, paper, or by means of any false statement, written or verbal, or by means of any false or fraudulent practice whatsoever, or shall be guilty of any willful act or omission by means whereof the Government of the Republic of the Philippines might be deprived of the lawful duties, or any portion thereof, accruing from the merchandise or any portion thereof, embraced or referred to in such invoice, declaration, affidavit, letter, paper, or statement, or affected by such act or omission, shall, for each offense, be punished by a fine of not less than six hundred pesos but not more than five thousand pesos and by imprisonment for not less than six months nor more than two years and, if the offender is an alien, he may be subject to deportation."

SEC. 3. This Act shall take effect upon its approval.

Approved, June 8, 1950.

RESOLUTIONS OF CONGRESS

S. Jt. R. No. 3

[JOINT RESOLUTION NO. 1]

JOINT RESOLUTION EXTENDING THE AUTHORITY GRANTED TO THE PRESIDENT OF THE PHILIPPINES TO REGULATE THE VOLUME OF IMPORTS BY QUOTA OR LICENSE OR PERMIT BY REPUBLIC ACT NUMBERED FOUR HUNDRED TWENTY-THREE.

WHEREAS, Republic Act Numbered Four hundred and twenty-three, amending Republic Act Numbered Three hundred thirty, granted to the President of the Philippines authority to regulate the volume of imports by quota or license or permit, which authority shall terminate on April thirty, nineteen hundred and fifty;

WHEREAS, in order to balance the foreign trade of the Philipines, to conserve the international dollar reserves of the country, and to promote and develop domestic industries, it is essential that the authority granted to the President be extended, and the present system of import control maintained, until the Congress shall enact a new Import Control Act; and

WHEREAS, it is clear that the Congress shall be unable to pass such legislation with the necessary deliberation and study before April thirty, nineteen hundred and fifty: Now, therefore,

Be it resolved by the Senate and House of Representatives of the Philipines in Congress assembled:

That the authority granted by Republic Act Numbered Four hundred and twenty-three, amending Republic Act Numbered Three hundred and thirty, to the President of the Philippines to regulate the volume of imports by quota or license or permit in accordance with the provisions of the aforesaid Acts, be, as it is hereby, extended until the close of the regular session of the Congress in the year nineteen hundred and fifty.

Approved, May 3, 1950.

H. Jt. R. No. 2

[JOINT RESOLUTION NO. 2]

JOINT RESOLUTION AWARDING A CONGRESSIONAL GOLD MEDAL TO AMBASSADOR CARLOS P. ROMULO, FOR DISTINGUISHED SERVICE TO THE PHILIPPINES AND TO THE CAUSE OF WORLD PEACE.

WHEREAS, the Honorable Carlos P. Romulo, Chief of the Philippine Mission to the United Nations, was elected President of the General Assembly of the United Nations on September 23, 1949;

WHEREAS, in this high capacity, by his brilliant and untiring efforts, he has greatly advanced the cause of

world peace and understanding in these perilous times in which the cold war and the atomic bombs actually threaten the world to total destruction;

WHEREAS, by his wise, tactful and devoted leadership of the United Nations, he has won for himself the admiration and respect of his colleagues representing fifty-nine nations, and for his country a place of unprecedented honor and prestige in that great assemblage of sovereign States: Now, therefore, be it

Resolved by the Senate and the House of Representatives of the Philippines in Congress assembled:

To award to the Honorable Carlos P. Romulo, in recognition of the invaluable service he has rendered the peoples of the Philippines and of the world at large as President of the General Assembly of the United Nations, a Congressional Gold Medal, the same to be determined by the President of the Philippines and bearing on the obverse side thereof a three-quarters engraved likeness of Ambassador Romulo, and the words: "HON. CARLOS P. ROMULO, PRESIDENT OF THE UNITED NATIONS GENERAL ASSEMBLY, 1949–1950" and on the reverse side thereof, in the center, the following words: "AWARDED BY THE CONGRESS OF THE PHILIPPINES"; and in a circle the words: "FOR DISTINGUISHED SERVICE TO WORLD PEACE AND UNDERSTANDING."

The cost of said medal shall be defrayed from any available appropriations for the Senate and House of Representatives in equal proportion.

Approved, June 16, 1950.

DEPARTMENT AND BUREAU ADMINISTRATIVE ORDERS AND REGULATIONS

DEPARTMENT OF THE INTERIOR

DEPARTMENT ORDER No. 184

June 9, 1950

RECLASSIFICATION OF THE MUNICIPALITY OF MAJAYJAY, LAGUNA

For the information and guidance of all concerned, publication is hereby made that, under date of June 2, 1950, the municipality of Majayjay, Laguna, has been classified by his Excellency, the President of the Philippines as second class, effective July 1, 1950, subject to the condition that said municipality shall pay the full amount of the increase in the salary of the justice of the peace thereof resulting from such change in classification until the portion thereof payable by the National Government shall have been duly authorized in the General Appropriation Act.

SOTERO BALUYUT
Secretary of the Interior

DEPARTMENT ORDER No 185

June 10, 1950

CREATING A SCREENING COMMITTEE

In connection with the directive on command responsibility of His Excellency, the President on graft and corruption dated June 8, 1950, a screening committee is hereby created in this Department to consist of the Undersecretary of the Interior, Hon. Nicanor Roxas, as Chairman, and the following as members:

1. Atty. Abelardo J. Reyes, Administrative Officer
2. Atty. Emiliano Cortez, Chief, Law Division
3. Atty. Juan Ipac, Chief, Public Order Division
4. Atty. Clemente Sioson, In Charge, Provincial Division

This committee shall receive and look into the merits of all complaints, verbal or written, filed with the Department against any of its officials and employees and the officials and employees of the national offices and local governments under the jurisdiction of the Department of the Interior. The screening committee shall submit to the undersigned from time to time as circumstances warrant the facts of each case handled by it with proper recommendation for such dispositive action as may be appropriate.

13852——4

As the Secretary of the Interior has been given thirty days from tomorrow, or until July 10, 1950, within which to submit to the President a complete report of the action taken on this matter, the screening committee shall also prepare in time the desired report.

SOTERO BALUYUT
Secretary of the Interior

DEPARTMENT ORDER No. 186

June 10, 1950

CLASSIFICATION OF THE MUNICIPALITY OF BUAYAN, COTABATO

For the information and guidance of all concerned, publication is hereby made that under date of May 26, 1950, the municipality of Buayan, Cotabato, has been classified by His Excellency, the President of the Philippines, as third class, effective June 1, 1950.

SOTERO BALUYUT
Secretary of the Interior

DEPARTMENT ORDER No. 187

June 23, 1950

RECLASSIFICATION OF THE PROVINCE OF LEYTE

For the information and guidance of all concerned, publication is hereby made of the following letter, dated June 16, 1950, of His Excellency, the President of the Philippines, classifying, pursuant to the provisions of Republic Act No. 130, the province of Leyte, as first class A, effective July 1, 1950:

"Pursuant to the authority vested in me by Republic Act No. 130, and upon your recommendation, concurred in by the Secretary of Finance, the province of Leyte is hereby classified as first class A effective July 1, 1950, it appearing that its average annual revenue for the last three consecutive fiscal years amounts to more than ₱500,000 which is the minimum required of first class A provinces.

"It is understood, however, that this approval is subject to the condition that the province of Leyte shall pay the full amount of the increases in the salaries of the Provincial Auditor and the District Health Officer resulting from such change in classification until the portions thereof payable by the National Government shall

have been duly authorized in the annual General Appropriation Act."

SOTERO BALUYUT
Secretary of the Interior

DEPARTMENT ORDER NO. 188

June 23, 1950

RECLASSIFICATION OF THE PROVINCE OF COTABATO

For the information and guidance of all concerned, publication is hereby made of the following letter, dated June 15, 1950, of His Excellency, the President of the Philippines, classifying, pursuant to the provisions of Republic Act No. 130, the province of Cotabato, as first class B, effective July 1, 1950:

"Pursuant to the authority vested in me by Republic Act No. 130, and upon your recommendation, concurred in by the Secretary of Finance, the province of Cotabato is hereby classified as First Class B effective July 1, 1950, it appearing that its average annual revenue for the last three consecutive fiscal years amounts to more than ₱400,000 which is the minimum required of First Class B provinces.

"It is understood, however, that this approval is subject to the condition that the province of Cotabato shall pay the full amount of the increase in the salaries of the Provincial Auditor and the District Health Officer resulting from such change in classification until the portions thereof payable by the National Government shall have been duly authorized in the annual General Appropriation Act."

SOTERO BALUYUT
Secretary of the Interior

DEPARTMENT ORDER NO. 189

June 27, 1950

RECLASSIFICATION OF THE PROVINCE OF LAGUNA

For the information and guidance of all concerned, publication is hereby made of the following letter, dated June 19, 1950, of His Excellency, the President of the Philippines, classifying, pursuant to the provisions of Republic Act No. 130, the province of Laguna, as first class A, effective July 1, 1950:

"Pursuant to the authority vested in me by Republic Act No. 130, and upon your recommendation, concurred in by the Secretary of Finance, the province of Laguna is hereby classified as first class A, effective July 1, 1950, it appearing that its average annual revenue for the last three consecutive years amounts to more than ₱500,000 which is the minimum required for first class A provinces.

"It is understood, however, that this approval is subject to the condition that the province of Laguna shall pay the full amount of the increases in the salaries of the Provincial Auditor and the District Health Officer resulting from such change in classification until the portions thereof payable by the National Government shall have been duly authorized in the annual General Appropriation Act."

SOTERO BALUYUT
Secretary of the Interior

DEPARTMENT ORDER NO. 190

June 27, 1950

RECLASSIFICATION OF THE MOUNTAIN PROVINCE

For the information and guidance of all concerned, publication is hereby made of the following letter, dated June 22, 1950, of His Excellency, the President of the Philippines, classifying, pursuant to the provisions of Republic Act No. 130, the Mountain Province, as first class, effective July 1, 1950:

"Pursuant to the authority vested in me by Republic Act No. 130, and upon your recommendation, concurred in by the Secretary of Finance, the Mountain Province is hereby classified as first class, effective July 1, 1950, it appearing that its average annual revenue for the last three consecutive fiscal years amounts to more than ₱300,00 which is the minimum required of first class provinces.

"It is understood, however, that this approval is subject to the condition that the Mountain Province shall pay the full amount of the increases in the salaries of the Provincial Auditor and the District Health Officer resulting from such change in classification until the portions thereof payable by the National Government shall have been duly authorized in the annual General Appropriation Act."

SOTERO BALUYUT
Secretary of the Interior

PROVINCIAL CIRCULAR
(Unnumbered)

June 8, 1950

PROVISIONS OF THE WAR CLAIMS ACT OF 1948 AS EXPLAINED BY THE U. S. WAR CLAIMS COMMISSION

To all Provincial Governors and City Mayors:

There are being sent under separate cover seventeen copies of a booklet prepared by the U. S. War Claims Commission, explaining the provisions of the

War Claims Act of 1948 and giving instructions to lawful Filipino claimants under the said Act. As the dissemination of the information contained therein will serve not only to enlighten those who may be entitled to the benefits of the Act but also to save time and money for those who have no right to lay claim thereto, it is requested that the aforementioned booklets be distributed to the local officials under your jurisdiction. If necessary, it is also requested that mimeographed copies thereof be made in order to give it the widest publicity possible.

SOTERO BALUYUT
Secretary of the Interior

PROVINCIAL CIRCULAR
(Unnumbered)

June 10, 1950

GRAFT AND CORRUPTION, MEASURES AGAINST—

To all Provincial Governors and City Mayors:

For the guidance and strict compliance of all concerned, there is quoted below the letter to this Department dated June 8, 1950 of the President of the Philippines, which is self-explanatory:

"In view of the repeated denunciations of the existence of graft and corruption in the public service, I hereby enjoin you and all directors of bureaus and chiefs of offices under you to take suitable and effective measures to eliminate or prevent graft and corruption in that department and in the bureaus and offices under it. Although mere rumors or gossips may not be taken as proof of graft and corruption, the persistence of a public and reasonable belief in its existence in any Bureau or Office should be sufficient reason to impel its Director or Chief or its Department Head to conduct such investigation as he may deem appropriate to establish or disprove the accuracy of the public belief. Consequently, I further enjoin that such investigation be conducted within a reasonable time but not later than 30 days from the receipt hereof. Upon the expiration of the thirty-day period herein fixed, you are to submit to this Office a complete report of the action taken on this matter by you and said directors of bureaus and chiefs of offices.

"I shall consider the failure to take the measures referred to as neglect of duty and as sufficient cause for separation from the service of the official concerned. The occurrence of duly proved cases of graft and corruption in that Department or in any bureau or office under it during or after the period herein fixed shall be deemed sufficient evidence of failure to take the measures herein enjoyed to be taken and, unless it is satisfactorily shown that the occurrence of said cases is not due to his failure, shall subject the erring official to the risk of separation from the service and to the penalty which the law prescribes.

"To the end that the bureau directors and the chiefs of offices under that Department may be duly apprised of this order, you are hereby directed immediately to transmit to them the contents hereof."

Provincial Governors are hereby requested to transmit immediately the contents hereof to all the municipal mayors under their jurisdiction.

SOTERO BALUYUT
Secretary of the Interior

DEPARTMENT OF JUSTICE

ADMINISTRATIVE ORDER NO. 68

June 2, 1950

AUTHORIZING JUDGE JUAN P. ENRIQUEZ, EIGHTH JUDICIAL DISTRICT, SECOND BRANCH, TO CONTINUE THE TRIAL OF CERTAIN CASES IN LIPA CITY.

In the interest of the administration of justice, the Honorable Juan P. Enriquez, Judge of the Eighth Judicial District, second branch, is hereby authorized to continue in Lipa City, the trial of criminal cases Nos. 1 and 8 of the Court of First Instance of Batangas, which were previously tried by him in Batangas, Batangas, and to enter final judgments therein.

RICARDO NEPOMUCENO
Secretary of Justice

ADMINISTRATIVE ORDER NO. 69

June 3, 1950

ADVANCING OR TRANSFERRING THE TERMS OF COURT AT CORON AND PUERTO PRINCESA, PALAWAN TO CERTAIN DATES.

It appearing that the means of transportation in the Province of Palawan are irregular, considering the distance between the municipalities of Coron, Cuyo and Puerto Princesa, and in the interest of the administration of justice, the terms of court at Coron, Province of Palawan, on the first Monday of August, 1950; at Cuyo, same province, on the second Thursday of August, 1950; and at Puerto Princesa, same province, on the fourth Wednesday of August, 1950; are, pursuant to section 54 of Republic Act No. 296, last paragraph, hereby advanced or transferred to any time from June 9, 1950 to December 31, 1950, in the discretion of the judge.

RICARDO NEPOMUCENO
Secretary of Justice

ADMINISTRATIVE ORDER NO. 70

June 5, 1950

AUTHORIZING CADASTRAL JUDGE MANUEL P. BARCELONA TO DECIDE IN BULACAN PROVINCE CERTAIN CASES.

In the interest of the administration of justice and pursuant to the request of Cadastral Judge Manuel P. Barcelona, he is hereby authorized to decide in the Province of Bulacan the following cases which were previously tried by him while holding court in Pasig, Rizal.

Criminal Case No. 2102, entitled "People *vs.* Agapito Gomapar *alias* Agapito Ilog" for bigamy;

Criminal case No. 2140, entitled "People *vs.* Isidro Tan Cailles" for murder and multiple frustrated murder; and

Criminal case No. 2029, entitled "People *vs.* Eugenia Vilarin" for estafa.

Judge Barcelnoa is also hereby authorized to resolve motion for delivery of property in Special Proceeding No. 2414 of the Court of First Instance of Rizal entitled Intestate Estate of the deceased Marcelo de Borja.

RICARDO NEPOMUCENO
Secretary of Justice

ADMINISTRATIVE ORDER NO. 71

June 5, 1950

AUTHORIZING CADASTRAL JUDGE JOSE P. FLORES TO DECIDE IN LAOAG, ILOCOS NORTE, CERTAIN CRIMINAL CASES.

In the interest of the administration of justice and pursuant to the request of Cadastral Judge Jose P. Flores, hc is hereby authorizcd to decide in Laoag, Ilocos Norte, criminal cases Nos. 915, 802 and 719 of the Court of First Instance of La Union, which were previously tried by him while holding court in La Union.

RICARDO NEPOMUCENO
Secretary of Justice

ADMINISTRATIVE ORDER NO. 72

June 6, 1950

AUTHORIZING JUDGE-AT-LARGE GAVINO ABAYA TO HOLD COURT IN NUEVA ECIJA

In the interest of the administration of justice, the Honorable Gavino S. Abaya, Judge-at-Large, is hereby authorized to hold court in the province of Nueva Ecija, beginning on the nineteenth instant, for the purpose of trying all kinds of cases and to enter final judgments therein.

RICARDO NEPOMUCENO
Secretary of Justice

ADMINISTRATIVE ORDER NO. 75

June 12, 1950

AUTHORIZING JUDGE EUSEBIO RAMOS, EIGHTH JUDICIAL DISTRICT, MINDORO AND MARINDUQUE TO HOLD COURT IN SANTA CRUZ, MARINDUQUE.

In the interest of the administration of justice and pursuant to the provisions of section 56 of Republic Act No. 296, the Honorable Eusebio Ramos, Judge of the Eighth Judicial District, Mindoro and Marinduque, is hereby authorized to hold court in the municipality of Santa Cruz, province of Marinduque, from July 13 to 19, 1950, for the purpose of trying all kinds of cases and to enter final judgments therein.

RICARDO NEPOMUCENO
Secretary of Justice

ADMINISTRATIVE ORDER NO. 76

June 13, 1950

FURTHER AMENDING ADMINISTRATIVE ORDER NO. 217, DATED DECEMBER 1, 1948, AS AMENDED

Administrative Order No. 217 of this Department, dated December 1, 1948, as amended by Administrative Orders Nos. 92 and 123 of this Department, dated July 11, 1949 and August 31, 1949, respectively, is hereby further amended insofar as the assignment of judges as members of the following Guerrilla Amnesty Commission is concerned:

SECOND COMMISSION: Judges Antonio Belmonte, Zoilo Hilario, Simeon Ramos and Jose P. Flores—for the provinces of Ilocos Norte, Ilocos Sur, Abra and La Union.

RICARDO NEPOMUCENO
Secretary of Justice

ADMINISTRATIVE ORDER NO. 78

June 14, 1950

AUTHORIZING JUDGE EDILBERTO BAROT, FIFTEENTH JUDICIAL DISTRICT, SURIGAO AND AGUSAN, TO HOLD COURT IN THE PROVINCE OF AGUSAN.

In the interest of the administration of justice and pursuant to the provisions of section 56 of Republic Act No. 296, the Honorable Edilberto Barot, Judge of the Fifteenth Judicial District, Surigao and Agusan, is hereby authorized to hold court in the province of Agusan from July 3 to 22, 1950, for the purpose of trying all kinds of cases and to enter final judgments therein.

RICARDO NEPOMUCENO
Secretary of Justice

ADMINISTRATIVE ORDER No. 79

June 14, 1950

AUTHORIZING CADASTRAL JUDGE JOSE RODRIGUEZ TO HOLD COURT IN BORONGAN, SAMAR

In the interest of the administration of justice and pursuant to the provisions of section 56 of Republic Act No. 296, the Honorable Jose Rodriguez, Cadastral Judge, is hereby authorized to hold court in the municipality of Borongan, province of Samar, beginning July 1, 1950, for the purpose of trying all kinds of cases and to enter final judgments therein.

RICARDO NEPOMUCENO
Secretary of Justice

ADMINISTRATIVE ORDER No. 80

June 16, 1950

TEMPORARILY DETAILING ASSISTANT PROVINCIAL FISCAL AMADO TOLENTINO OF MINDORO TO THE PROVINCE OF ROMBLON AS PROVINCIAL FISCAL THEREOF.

In the interest of the public service and pursuant to the provisions of section 1680 of the Revised Administrative Code, Mr. Amado Tolentino, Assistant Provincial Fiscal of Mindoro, is hereby temporarily detailed to the province of Romblon, there to discharge the duties of Provincial Fiscal, effective immediately and to continue during the absence on leave of the regular Fiscal thereof.

RICARDO NEPOMUCENO
Secretary of Justice

ADMINISTRATIVE ORDER No. 81

June 15, 1950

APPOINTING UNDERSECRETARY OF JUSTICE JOSE B. BENGZON DELEGATE TO ACT AS CHAIRMAN OF THE RESPECTIVE COMMITTEES CREATED UNDER DEPARTMENT ORDERS NOS. 73 AND 74, FOR AND IN BEHALF OF THE SECRETARY OF JUSTICE.

Pursuant to Administrative Orders Nos. 73 and 74, of this Department, dated June 12, 1950, implementing the directive contained in the letter dated June 8, 1950, of His Excellency, the President of the Philippines, the Undersecretary of Justice, Hon. Jose P. Bengzon, is hereby appointed as my Delegate to act for and in my behalf as Chairman of the respective Committees created under said Administrative Orders.

In line with the requirement in the said letter of the President, it is desired that early action be taken on all administrative cases pending in the respective offices mentioned in the said Administrative Orders.

RICARDO NEPOMUCENO
Secretary of Justice

ADMINISTRATIVE ORDER No. 82

June 17, 1950

AMENDING ADMINISTRATIVE ORDER NO. 217, DATED DECEMBER 1, 1948

Administrative Order No. 217 of this Department, dated December 1, 1948, is hereby amended insofar as the assignment of judges as members of the following Guerrilla Amnesty Commission is concerned:

SEVENTH COMMISSION: Judges Higinio Macadaeg, Ramon San Jose and Potenciano Pecson—for cases from the different provinces and cities now pending appeal in the Court of Appeals and in the Supreme Court.

RICARDO NEPOMUCENO
Secretary of Justice

ADMINISTRATIVE ORDER No. 84

June 20, 1950

DESIGNATING SPECIAL ATTORNEY VICTOR SANTILLAN IN THE OFFICE OF THE SOLICITOR GENERAL AS SPECIAL COUNSEL TO ASSIST THE PROVINCIAL FISCAL OF SORSOGON.

In the interest of the public service, and pursuant to the provisions of section 1686 of the Revised Administrative Code, Mr. Victor Santillan, Special Attorney in the Office of the Solicitor General, is hereby designated special counsel to assist the Provincial Fiscal of Sorsogon in the prosecution of the case entitled "People *vs.* Gojo et al.," for murder.

RICARDO NEPOMUCENO
Secretary of Justice

ADMINISTRATIVE ORDER No. 85

June 20, 1950

AUTHORIZING JUDGE-AT-LARGE MAGNO S. GATMAITAN TO DECIDE IN CALOOCAN, RIZAL, CERTAIN CIVIL CASES.

In the interest of the administration of justice, the Honorable Magno S. Gatmaitan, Judge-at-Large, is hereby authorized to decide in Caloocan, Rizal, civil cases Nos. 396 and 397 of the Court of First Instance of Tarlac, entitled "Isidra Cojuangco et al. *vs.* Manuel Ernesto Gonzales which were tried by him while holding court in said province.

RICARDO NEPOMUCENO
Secretary of Justice

ADMINISTRATIVE ORDER No. 86

June 72, 1950

AUTHORIZING JUDGE-AT-LARGE GAVINO S. ABAYA TO DECIDE IN MANILA A CERTAIN CASE

In the interest of the administration of justice, the Honorable Gabino S. Abaya, Judge-at-Large, is hereby authorized to decide in Manila beginning June 28, 1950, civil case No. 799, entitled "Jose Agoncillo, Jr. *vs.* Simplicio Batolan" of the Court of First Instance of Rizal, which was previously tried by him while holding court in Caloocan, Rizal.

RICARDO NEPOMUCENO
Secretary of Justice

OPINIONS OF THE SECRETARY OF JUSTICE

Opinion No. 103 (1949)

2ND INDORSEMENT

December 23, 1949

Respectfully returned to the Honorable, the Secretary of Foreign Affairs, Manila.

It appears herein that Mr. Emeterio Pascual, a Filipino citizen, has filed a case against the United States Government in the United States Court of Claims on a case of action arising out of a contractual relationship between Mr. Pascual and the United States Army. According to the manifestations made by Mr. LaVern R. Dilweg, a Washington attorney who is counsel for Mr. Pascual, the Office of the United States Attorney General intends to file a motion to dismiss the case on the jurisdictional ground of want of reciprocity between the United States Government and the Philippine Republic as required by section 155 of the Act of Congress of March 3, 1911 (28 USCA, sec. 261) which provides as follows:

> "*Aliens.*—Aliens who are citizens or subjects of any Government which accords to citizens of the United States the right to prosecute claims against such Government in its courts, shall have the privilege of prosecuting claims against the United States in the Court of Claims, whereof such court, by reason of their subject matter and character, might take jurisdiction."

In view thereof, it is herein asked that an authoritative opinion be secured from this Department to the effect that an American citizen may sue the Philippine Government in a manner that would satisfy the requirement of reciprocity pursuant to the above-quoted provision.

The view of the United States Attorney General that there is no substantial reciprocity existing between the United States and the Philippines in this regard is based apparently on the provisions of Act No. 3083, approved on March 16, 1923, which defines the conditions under which the Government of the Philippines may be sued. It is claimed that the provision of this law requiring a person who desires to avail himself of the privilege therein conferred to show that he has presented his claim to the Auditor General and that the latter did not decide the same within two months from the date of its presentation (sec. 2), virtually negates the right of an American citizen to sue the Philippine Government because, if the Auditor General acts upon the claim within two months, as may be expected, the party concerned is thereby precluded from bringing his case to the courts.

While this Department concurs in the above observation insofar as the provisions of Act No. 3083 are concerned,

the same no longer holds true since the enactment of the Philippine Constitution, section 3, Article XX of which provides that "when the aggrieved party is a private person or entity, an appeal from the decision of the Auditor General may be taken directly to a court of record in the manner provided by law". This constitutional provision has been further implemented by Commonwealth Act No. 327, approved on June 18, 1938, which provides in part as follows:

> "SEC. 2. The party aggrieved by the final decision of the Auditor General in the settlement of an account or claim, may within thirty days from receipt of the decision, take an appeal in writing:
>
> "(*a*) To the President of the United States, pending the final and complete withdrawal of her sovereignty over the Philippines, or
>
> "(*b*) To the President of the Philippines, or
>
> "(*c*) To the Supreme Court of the Philippines if the appellant is a private person or entity."

* * * * * * *

It will be noted that under the provisions of Commonwealth Act No. 327 recourse to the court by the claimant is not precluded by a decision rendered by the Auditor General within the period fixed for deciding claims presented to the said official. The law allows the party aggrieved by any final decision of the Auditor General to appeal the same directly to the Supreme Court if the claimant is a private person or entity. In a sense, it may even be said that the Philippine statute is more liberal than the American law on the matter because, whereas, the latter specifies the claims over which the Court of Claims may exercise jurisdiction (28 USCA, sec. 250), the former speaks broadly of "all cases involving the settlement of accounts or claims" without specifying the nature of those accounts or claims for which the Government may be sued pursuant to and in accordance with the procedure prescribed in Commonwealth Act No. 327. It may be stated, moreover, that Commonwealth Act No. 327 has not repealed Act No. 3083 and that the remedies prescribed under the latter may still be availed of in the cases falling thereunder.

It is accordingly the opinion of this Department that under existing Philippine statutes an American citizen may sue the Philippine Government in the Philippine courts in a manner that satisfies the requirement of reciprocity in order that a citizen of the Philippines may be allowed to file a suit against the United States Government in the United States Court of Claims.

RICARDO NEPOMUCENO
Secretary of Justice

APPOINTMENTS AND DESIGNATIONS

BY THE PRESIDENT OF THE PHILIPPINES

Ad interim appointments confirmed by the Commission on Appointments:

DEPARTMENT OF FOREIGN AFFAIRS

Judge Salvador V. Esguerra, Amado del Rosario and Mauro Calingo, appointed Members of the Board of Foreign Affairs Service Personnel, Examinations and Review, June 16, 1950.

DEPARTMENT OF THE INTERIOR

Hon. Crispin Labaria, appointed *ad interim* Member of the Provincial Board of Misamis Occidental, June 9, 1950.

Hon. Juan Quijano, appointed *ad interim* Member of the Provincial Board of Ilocos Sur, June 9, 1950.

Col. Juan Causing, designated Acting Chief of Police of the City of Cebu, June 5, 1950.

Lt. Col. Celestino C. Juan, appointed *ad interim* Deputy Chief of Police of the City of Manila, June 9, 1950.

Major Eugenio C. Torres, appointed *ad interim* Chief of Detectives of the City of Manila, June 9, 1950.

DEPARTMENT OF FINANCE

Angel Paguia, appointed *ad interim* Chairman of the Board of Tax Appeals of the Province of Negros Occidental, June 8, 1950.

Ramon Dado, Jr., designated Acting Provincial Assessor of Abra; Felix G. Martirez of Agusan; Victoriano H. Perez of Albay; Ciriaco L. Latonero of Bataan; David S. Romero of Batanes; Saturnino David of Batangas; Melanio Honrado of Bohol; Pastor B. de la Cerna of Bukidnon; Sisenando Silvestre of Cagayan; Ceferino R. Diño of Camarines Norte; Enrique Claudio of Capiz; Jorge Labayo of Catanduanes; Rosalio D. Macrohon of Cotabato; Jose R. Collante of Davao; Vicente Resurreccion of Ilocos Norte; Meliton Prudencio of Ilocos Sur; Ildefonso D. Jimenez of Iloilo; Gregorio S. Castelo of Isabela; Balbino Kabigting of Laguna; Amadeo Eugenio of La Union; Melecio Palma of Leyte; Irineo V. Lapres of Marinduque; Nicolas R. Tolentino of Masbate; Nicolas Galvez of Mindoro; Pascual Caoili of Misamis Occidental; Placido H. Bandonill of Mountain Province; Pedro Encarnacion of Negros Occidental; Benito L. Sales of Nueva Vizcaya; Fernando T. Fuentes of Palawan; Andres Agcaoili of Quezon; Jose L. Recio of Romblon; Pio Advincula of Sorsogon; Roman Padilla of Sulu; Angel S. Tadeo of Tarlac; Marcos Jorge of Zambales; and Filomeno D. Pacana of Zamboanga, June 12, 1950.

DEPARTMENT OF JUSTICE

Saturnino Solidum, appointed *ad interim* Justice of the Peace of Ibajay and Nabas, Capiz; Diosdado Reloj of Malay, Capiz; Jose U. Tenazas of Malinao, Capiz; Pedro san Roque of Caramoran, Catanduanes; Jose B. Nambayan of Dasmariñas and Carmona, Cavite; Benigno Caiobes of Santa Cruz, Mindoro; Luis A. Go of Villareal and Talalora, Samar; and Alejandro Sison of Motiong and Jiabong, Samar, June 10, 1950.

Jose A. de Leon, appointed *ad interim* Justice of the Peace of Pagalungan, Cotabato, June 16, 1950.

Bonifacio Clemente, appointed *ad interim* Justice of the Peace of Pinili, Ilocos Norte, June 16, 1950.

MUNICIPAL OFFICIALS

Aniceto Arrofo and Olmedo de Lara, appointed Councilors of San Isidro, Leyte, June 3, 1950.

Jose D. Perlas, appointed Councilor of San Joaquin, Iloilo, June 5, 1950.

Lucio Sacay, appointed Vice-Mayor of Isabel, Leyte, June 6, 1950.

Constancio Militante, appointed Councilor of Quezon, Quezon, June 7, 1950.

Pedro Duerme, appointed Councilor of Calayan, Cagayan, June 12, 1950.

Prudencio Pardo, appointed Councilor of Pili, Camarines Sur, June 12, 1950.

Domingo Camu, appointed Councilor of Calolbon, Catanduanes, June 12, 1950.

Benito Estramos, appointed Councilor of Digos, Davao, June 14, 1950.

Nicolas Gansan, appointed Councilor of Jasaan, Misamis Oriental, June 20, 1950.

Isidro Jinson and Ernesto Treyes, appointed Councilors of Sagay, Negros Occidental, June 23 1950.

HISTORICAL PAPERS AND DOCUMENTS

Statement of Secretary of Foreign Affairs Carlos P. Romulo upon being conferred the One World Award for International Statemanship by the One World Award Committee, June 3, 1950:

I am highly honored by the distinction conferred upon me by the One World Award Committee. I accept it not as a mark of personal achievement but rather as a token of recognition of the value of the work which I have undertaken in the foreign service of the Philippines. All my representations in behalf of the Philippines in the United Nations and other international councils have been directed towards one supreme objective; namely, to help establish world peace based on freedom and justice under which all nations, particularly the small and weak countries, may have an opportunity to develop unhampered by the fear of aggression or the paralyzing effects of the cold war. In this endeavor I have been guided by the peaceful traditions of the Filipino people and by our foreign policy based on the provision of the Philippine Constitution renouncing war as an instrument of national policy. I have enjoyed the further advantage of having been able to rely on the encouragement of the President as well as on the unfailing support of the Congress and of our people. The recognition of my work in the international field therefore redounds to their credit as much as it does to mine.

The most recent and in some respects the most important phase of this work was the Baguio Conference of 1950 which was held a few days ago. This conference could not have been held, and could not have yielded such fruitful results, without the united support of the Filipino people.

By enhancing the prospects of peaceful development of the nations in South and Southeast Asia, the Baguio Conference of 1950 has contributed to the peace and stability of the whole world. The creation of One World based on the principle of tolerance and co-existence among the various countries and groups of countries has always been the goal of the United Nations. The Baguio Conference of 1950 is a constructive step towards the attainment of that goal. It is our task to follow it up with firmness, patience and a sense of dedication until the dream of One World becomes a living reality.

Twentieth Monthly Radio Chat of His Excellency, President Elpidio Quirino, June 15, 1950:

Fellow Countrymen:

Here again, I am making my periodic report to acquaint you with the latest developments in our national scene.

We have had a busy month, busy at home and busy with our neighbors. On my initiative and invitation a Southeast Asia conference has been held in Baguio. It has demonstrated that the free peoples of our part of the world are agreeabble to mutual consultation and common action to resolve their common problems. It has proved to be a veritable spiritual union of peoples bound by common sympathies.

Life for individuals as with nations is so constituded as to require multifold and not merely piecemeal, isolated action. We have a life to live at home and relations to maintain abroad, and must make a judicious use of our constructive energies to effect a wise coordination and integration of action in those two fields. The fact that world powers watched closely the proceedings of the Baguio Conference indicates that a fateful step in the life of SEA nations was taken and that the world as a whole must henceforth reckon with it.

But we had also a month of unhappy publicity abroad regarding our domestic situation. The stories of graft and corruption made credible by repetition, as well as of the now arrested activities of our lawless elements, have been utilized by our detractors as an excuse for the ignorant prediction that our Government will collapse in a few months. This gratuitous prediction is certainly the pay-off of the exaggerated, systematic fault-finding of our critics, some of them of good intention, many of them with axes to grind, others with dark ends to serve. Of course, you and I do not want to minimize the importance of the peace and order situation or the desirability of a more concentrated effort to arrest the evils that to some extent have undermined the good name of the Government in some of its branches.

But the Government is not going to fall. I have just returned from a trip to Central Luzon comprising the provinces of Bulacan, Nueva Ecija, Tarlac, and Pampanga. I want to tell you that what had been regarded heretofore as a troubled spot is now a busy area. The faces of the civilian population all throughout beamed with enthusiasm and joy as I went through their midst. I saw that where there once had been fear and want and dissatisfaction, there is now a feeling of contentment and security. I saw new homes where two or three years ago I had seen nothing but deserted, dilapidated houses, especially in the outlying barrios between Nueva Ecija and Tarlac formerly reputed to be the nest of dissidents ele-

ments. New bridges, new roads and new public buildings greeted my eyes. The fields all throughout were verdant and the people busy in their respective callings, proudly exhibiting the fruits of their labor all along the road. I saw more work animals and palay mounds in the fields and less cockpits but more puericulture centers in the poblaciones.

When this region regarded as the worst spot in relation to the state of peace and order presents such a picture of activity and development, how can a reasonable citizen expect that his Government will fall? No!

There is a fantasy being encouraged among a few elements here to the delight of these latter-day imperialists—the Communists—and certain old colonial die-hards. By attempting beyond bounds to destroy public confidence in the constituted government, it is imagined they can conjure up a new regime and puppet and justify intervention by some alien power to sustain that puppet. They think they can thus bring back imperialism here—Western or Communist. Beware of them!

We shall disappoint these morbid dreamers. We shall not permit their neurotic imagination to destroy us and our free institutions. That they should persistently play into the hands of the real enemy of our country and freedom as unwitting instruments of his propaganda is unfortunate indeed. That they do not realize they can't continue playing at philosophic bystanders and cultivating cabbages in the event of the enemy's victory, strains our credulity.

An American writer who was our recent guest here, quoted some Filipinos alleged to have been interviewed by him as saying: "We hope the United States will put on pressure for real changes here. Only a demagogue can raise the issue of national sensitivity, and the issue will be a false one if American recommendations are obviously for the public welfare in this country. Such pressure will get immense support among us. The worst thing will be if the United States, in anti-Communist panic, simply decide to aid the regime as it now stands."

This is a sample intrigue, pure and simple, because I am sure we have no local critics who are not man and Filipino enough to identify themselves with such a position of abject colonial subservience, or who believe that U. S. assistance must be premised on a change in regime here first in favor of one, more amenable to dictation from without.

The unhappy aspect of all this is that in order for our deprecators to hit me and my administration, our country and our people and our government have to be slandered in the eyes of the whole world.

But I am happy to note that our Philippine press is one in protesting against the suggestion that a foreign gov-

ernment be permitted to set up shop here anew. It is not too late for our people and our press to realize the need of closing ranks and refusing to be the naive instruments of the determined professional subverters of order and freedom in this country. I am equally happy to note that official spokesmen of America repudiate the very idea of the suggestion as totally unworthy of America's record here. And I am sure the good people of America will sustain them in that position.

I invite our people to take a more positive outlook. We are doing things, we are building things. Better than merely suppressing evil is doing positive good, creating new things to spell our prosperity and happiness. A lot of the energy we use in histrionic denunciation for the benefit of the sensationalists can be better utilized in thinking our problems through to enable us to stand on a more substantial footing. Why not occupy ourselves with more production of the things that we need to raise our living standards? Instead of inciting the masses, why don't we open their eyes to their better future in cooperative effort, directing their attention or organizing them to take advantage of the great possibilities in the general development in Mindanao, in Palawan and in the plains and rich valleys of the Isabela-Cagayan region? The retail trade is now in our hands; why don't we organize our small merchants better for our benefit instead of allowing others to serve as mere dummies of alien competitors? Instead of engaging in the battle of wits to show who is more responsible for the deplorable lack of morality in some phases of the public service, why don't we, like men, real, fearless citizens, go to the Integrity Board and denounce those individuals who are robbing us of our reputation as a God-fearing honest people?

But not everything is dark in our country today. Our Central Bank in its recent quarterly report has good news for us. The rate of our dollar savings is on the increase. That means stability for our economy and widening margin for securing our truly essential needs from abroad. There is also an increasing rate in local investment for the manufacture of goods we used to import, accelerated no doubt by the control measures that temporarily have created some difficulties among our traders. This trend, I am confident, will continue, as we make the necessary adjustments and as we concentrate our minds more and more on building and production and less on the politics of the hour and the next elections.

Let us graduate into positive action and production. Where everybody is busy with productive work, he has less time to conspire against his fellows, the prosperity which he helps to create broadens the blessings of its benefits among his neighbors and strengthens the security of his own person and his private possessions. This situa-

tion finds just reflection in the stability of his country and its institutions, and he finds ample basis for the pride and enthusiasm with which he rushes to its defense in the hour of danger.

Let us close ranks, I repeat, and unite, not to aid wittingly or unwittingly the real enemies of our freedom and our Republic, but to pool our creative resources for developing our country and making it secure against want, against fear, and against slavery whatever its color. Let us prepare to take stock of our individual selves to determine how much we have that we can continue to contribute to the common store of good will, wholesome understanding and creative energy necessary to building our Republic for permanence and promoting a free and peaceful world.

Speech of the Honorable Carlos P. Romulo, Secretary of Foreign Affairs before the Harvard University Alumni Association, New York, June 22, 1950:

Mr. President, Members of the Faculties, Members of the Alumni and the Graduating Classes, Ladies and Gentlemen:

The honor which your Alma Mater has conferred upon me today is a rare one indeed, and it is a deeply moving experience to have been chosen as the object of this solemn investiture.

The occasion might perhaps warrant an indulgence in symbolism: that I, who am a Filipino, and hence a foster-child of America, and an Asian, and therefore a son of the ancient East, should be invested with this mark of distinction by an outstanding cultural institution of the West, this great and venerable university of the New World.

One might draw from this the familiar symbol of "hands across the seas," but the words have reference to an ocean other than the Pacific. If, therefore, we are seeking after symbols, may we not take it that this event symbolizes the new era of man in which we live, in which it has become necessary that beneficent thoughts should extend across the barriers of time and space and link together all the peoples in all the continents of the world.

A citizen of the Philippines has cause for special gratification on an occasion such as this. I come from an Oriental country whose windows have remained open for centuries to the East and to the West and has lent itself to the free commerce of ideas and ways of life. Anchored to the East by immemorial tradition, it has been exposed to the winds of Latin civilization through Spain and of Anglo-Saxon civilization through America. Our political, economic, social and cultural institutions are thus a blend of the two main streams of Western civilization resting upon the original base of Oriental custom and tradition. We are a bridge between two worlds, the product, however

imperfect, of that cultural synthesis in which lies our hope for the eventual comity of mankind.

In this part of America, which more naturally tends to look eastward to the West rather than westward to the East, there is a certain merit and necessity in encouraging the recent tendency to consider the problems of Asia with a new sense of their urgency and importance. The rediscovery of the importance of Asia has come somewhat belatedly to America, and then only as a result of the gravest setback that the free world has suffered since the beginning of the cold war.

Measured in strictly material terms—in terms, that is to say, which would most impress the pragmatic Western mind—Asia is vastly important. It has more than half the population of the world, it possesses a substantial portion of the world's natural resources including certain vital raw materials of which it has a monopoly, and its south and eastern regions have a strategic value which is highly covered in the struggle for power.

Yet, it is precisely this habit of applying a purely material yardstick to Asia which has led to grievous misunderstanding between the Western nations and the peoples of the East. For centuries it poisoned the relations between the former as colonizers who worshipped material power and used it to secure dominion over the lands of the East, and the latter as subject peoples who became victims of their own disregard or contempt for material things. In the succeeding centuries, it deepened the cleavage between them because material power bred an appetite for more power, and this in turn required that the subject peoples be kept in poverty and ignorance the better to render them the willing and uncomplaining objects of exploitation.

Happily, the evil which these relations engendered has for the most part disappeared. Yet, even the recent attempt to revise the basis of these relations is somewhat marred by the same fundamental misconception in a more subtle form. The Western attitude toward Asia is still colored by the same predominant material considerations which originally dictated and dominated the Western approach towards Asia. Asia is still primarily a vital prop to the industry and commerce of the West, a critical theatre of the cold war, a potentially valuable ally in a shooting war, a major factor in global military strategy, a rich and populous region that must be kept in the camp of the democracies and on the side of the free world.

Though this judgment may seem valid and sufficient for the purposes of the West, it may not be so in the eyes of the Oriental peoples themselves. The recognition and acceptance of this difference is a basic condition for the revaluation of the relations between the Western nations and the peoples of Asia before these relations deteriorate beyond repair.

For a time there was an attempt to crystallize the aspirations of the peoples of Asia under the slogan of "Asia for the Asiatics." In the heyday of imperialism this slogan was like a trumpet-call that rallied the scattered and isolated forces of nationalism and freedom in the colonies. It brought about the long series of anti-foreign and anti-Western upheavals throughout the region. In the end, it inspired the misguided Japanese challenge to the Western powers in 1941, the greatest military effort ever put forth by an Asian country in modern times. But because the motivation was one of invidiousness and hate, and thus incompatible with the true spirit of the Asian peoples, the effort was doomed to failure.

Last month the Baguio Conference of 1950, attended by seven independent governments of South and Southeast Asia representing more than six hundred million people, proclaimed their determination "to ensure that in the consideration of the special problems of South and Southeast Asia the point of view of the peoples of this area is prominently kept in mind by any conference dealing with such problems, so that better understanding and cordial relations may subsist between the countries in the region and other countries of the world."

The countries of Asia have gone a long way to achieve the political maturity, serenity and dignity which these quiet but meaningful words imply. It is a simple statement of principle that is beyond argument, so obvious that it would be a commonplace if read in the context of any region other than Asia. But because this solemn declaration has come from the peoples of Asia, it acquires a certain historic quality. It is a warning that henceforth any decisions about the future of Asia and its peoples, by whomever they may be made, must take due account of the genuine interests of the Asian peoples themselves.

They claim this for themselves as an inalienable right; for the peoples of the West it is a timely word of caution which, if respected, will most surely bring about the achievement of their own legitimate objectives.

The objective, equally just and necessary for both, is cooperation on a basis of equality and mutual respect as well as of understanding of each other's problems.

There are a number of assumptions or "myths" about Asia which must be set aside in the interest of better understanding. One of these is the assumption that democracy of the Western type is or should be preferred and accepted by the Asian peoples. But democracy is not native to Asia. Asian society, for long ages, has rested upon a solid authoritarian base, heavily overgrown with custom, tradition and ritual. To describe the situation is not to defend it, and—need I say—it does not include my own country. But it is important in the dealings of the West with Asia during these critical moments that assump-

tions of this kind be avoided lest they lead to dangerous miscalculation.

The appeal of democracy, as we of the free world understand the term, is not general in Asia by any means. Therefore, the missionary zeal with which the advantages of democracy are being brought to the attention of the Asian peoples must rest on faith plus something else. That something is none other than good works.

To peoples who have known little or no freedom for centuries, who have lived for uncounted ages in a state of poverty and hunger, the high shine and polish which our propaganda has given to democracy can hold no special attractions. They will judge political and economic systems only in terms that have a concrete bearing on their daily lives: first, on what they have to do with the freedom movements among the still subject peoples of Asia; and secondly, on what they are disposed to do to help raise the living standards of the Asian peoples.

To see Asia through Asian eyes—this is the prime requisite for Western policy towards Asia. You cannot prepare a policy mould for Europe and, this having proved to be satisfactory there, assume that it will do for Asia as well. Nor, on the other hand, can you do one thing in Asia and then cancel that promptly by doing something else in Europe. There must be a judicious adaptation of of methods and parallel planning that will avoid confusion and waste.

The tendency to brand any nationalist movements whatever in Asia as communistic rests on another of those assumptions which need to be re-examined with care. There are unquestionably nationalist movements in Asia which are communist-led or which are abetted by the communists. But the fact does not necessarily invalidate the intrinsic quality of the genuine nationalist movements in the region. What has often happened is that these movements, though originally sprung from a people's natural aspirations to freedom, are subsequently taken away by the politically sly and ruthless communists from the hands of the timid and confused liberals lacking prompt and effective support from their friends in the West. We lose battles this way by default, and will continue losing them until we stop condemning all these movements indiscriminately and dissociating ourselves from them in every way.

The Western world should take a hint from the new frame of mind which is developing in many countries of Asia. I refer to the growing insistence on the part of many leaders in the region that they do not wish to have any part in the "cold war", or to be drawn into any military alliances of any kind, or to aggravate by any action of theirs the present dangerous tension in international affairs.

I refer not to my own country whose ties with America are the ties of a common democratic faith which were tested in the last war and which, I am sure, will not be found wanting if they should be tested again by a new challenge to the ideals and way of life which the American and Filipino peoples cherish with equal devotion. I make reference, rather, to a far more substantial portion of Asia whose leaders and peoples have plainly indicated a desire to stand aloof from the present struggle for power, not so much, I believe, from distrust of the two embattled sides, as from the hope that their own peaceful inclinations and their total dissociation from the explosive issues of the cold war may help to alleviate the situation and pave the way towards mutual accommodation and coexistence.

Who knows, indeed, whether or not this way to peace is ultimately the only way, and whether out of Asia, which can become at an instant's notice the theatre of a war of annihilation, will come the wisdom that will illumine the road to enduring peace. The war which we all dread can start in Asia, but the peace which we all desire can also begin there.

In the few years that have followed the independence of the Philippines and that have seen in rapid succession the emergence into freedom of India, Pakistan, Ceylon, Burma and the United States of Indonesia, there has arisen a strong desire to revive and strengthen the ties that have bound these countries together from ancient times before the coming of the West. It is quite natural that this desire should often be expressed in aggrieved and even defiant terms, for these ties were deliberately cut by some of the Western powers according to the well-known formula of divide and rule.

Yet, again, the West should take heart from the fact that these embittered sentiments are being allayed gradually. Provided always that there be no further deliberate attempts to turn back the clock in Asia, we can look forward to a new era in our relations with each other—an era most happily foreshadowed in the statement of the Australian, and the only non-Asian, representative to the Baguio Conference, when he said: "Historically, most countries in this area have developed traditional ties with countries outside the area, and it is only in recent years that many of us have come to know each other by close and direct contact. Fortunately, the making of new friends need not in any respect whatsoever lessen the ties which bind us to our old friends, and it is in that spirit that we meet here today."

Time will assuage the bitterness which colonialism has bred among the Asian peoples. It has already done that

in the Philippines, and it is at work in India, Pakistan and Ceylon. However, since danger draws near and time is of the essence, the process of assuagement and developing confidence and sympathy must be pushed at an accelerated pace. For, while it is true that we of Asia would rather keep our "old friends" than risk new ties with strangers, there must be a showing that the old friends are our friends indeed. That showing must be made against the background of the irreversible march of nationalism and freedom in Asia and in the insistent clamor of its peoples for more decent standards of living.

I have referred to my country as a "bridge" between the East and the West, and in the course of my remarks I have tried, in a measure, to perform this essential function. You have a great stake in Asia, and the Philippines can contribute much to its winning. We have an equally great stake in the free world of which America now stands as the leader, and you can help assure our participation in the common victory.

But before the profit and the victory must come understanding, and the time for mutual comprehension of each other's needs, desires, and aspirations is getting perilously short. It is my hope that by this act and by the words that have been spoken here we have contributed something of value to the growth of that understanding.

I am particularly happy that I have been vouchsafed the opportunity to speak thus in this great university. For it is the special responsibility of universities everywhere to tend the light of reason and understanding that it may burn steadily amid the storms of the present like vestal fire. Harvard, through the centuries, has performed this vital function for America and for a considerable portion of mankind, and I am certain that its hand will continue to shield that flame against the winds from the outer darkness—the gusts of hysteria and passion, panic and fear—until the sun of peace shines upon the good earth again.

Texts of communications exchanged between President Truman and President Quirino concerning the forthcoming Economic Survey Mission to the Philippines:

[LETTER OF PRESIDENT TRUMAN]

THE WHITE HOUSE WASHINGTON

June 1, 1950

My dear Mr. President:

I was most pleased to learn from Ambassador Cowen that on May twenty-seventh of this year you expressed to him your readiness to receive an American Economic Mission. Since your conversation with Secretary Acheson

and me during your brief visit to the United States last February, the American Government has continued to take an active interest in the problems of the Philippines. As I assured you in February, we desire to give help in any feasible and practicable way. At the time of our last meeting you suggested to me the possibility of a United States Economic Survey Mission which might go to the Philippines to examine the entire economic situation, to make recommendations and to advise the Philippine Government in working out a program which the United States Government might consider in its efforts to assist the Philippines. As you will recall, I said that I was most interested in the project and that we would give it sympathetic consideration.

Subsequent to your return to Manila I had received reports that you had been debating in your own mind whether this Mission should not be a Joint Philippine-American undertaking. I am, therefore, most pleased to learn that on May twenty-seventh you told Ambassador Cowen of your readiness to accept an American Mission, because as you are aware, the United States Government is firmly convinced that an American Mission will be most conductive to mutually satisfactory results. I would under no circumstances have wanted to embarrass you in any way by sending out an American Mission if you had had any mental reservation or doubts about the question. In view of the wide public interest in the matter I do believe now that it would be desirable either to proceed with the Mission or to decide to abandon the plan for the time being.

I understand that you have already appointed a group of Philippines citizens to study the present Philippine economic situation. The United States Government would, of course, hope and expect to receive the fullest cooperation of all Filipinos who are concerned about the problems of their country, and particularly of any group especially designated by you for this purpose. Without such cooperation no American Mission, of course, could be expected to produce a program and suggestions which would be helpful to the Philippines or susceptible of consideration by the United States.

This letter, therefore, is merely a reiteration of my previously expressed willingness to proceed with the formation of such a mission if it is still desired by you. I also wish, however, to take this opportunity of assuring you that this Government has no desire or intention to insist on such a mission, or to embarrass you in connection with it. I would be most happy to have your present views on this question.

I was delighted to learn from Ambassador Cowen that you have recovered sufficiently from the effects of your recent operation to enable you to resume your difficult tasks, and I trust that your recovery will continue satisfactorily.

Sincerely yours,

(Sgd.) HARRY S. TRUMAN

His Excellency ELPIDIO QUIRINO
President of the Republic of the Philippines
Manila

[REPLY OF PRESIDENT QUIRINO]

MALACAÑAN PALACE
MANILA

June 8, 1950

My dear Mr. President:

I was happy to read the text of your letter, dated June 1, 1950, which has been transmitted to me by Ambassador Myron M. Cowen through Secretary of Foreign Affairs Carlos P. Romulo in advance of the signed original.

A proper regard for the abiding interest which you, Mr. President, and your Government, have in the welfare of my country and my people moves me to express my concurrence in your proposal to form an American Economic Mission which will come to the Philippines to examine the entire economic situation, make recommendations, and advise the Philippine Government in working out a program which the United States Government might consider in its efforts to assist the Philippines.

There is scarcely and need, at this juncture, to review the course of the negotiations to afford mutual technical consultation on Philippine economic problems. Suffice it to say that the arrangement outlined in your letter is accepted by the Philippine Government on the basis of the cooperative procedure indicated therein and out of a desire to see this enterprise carried out.

I appreciate your assurance that the United States Government, and in particular, the United States Survey Mission, will seek the fullest cooperation of all Filipinos who are concerned about the problems of the country. No other group of Filipinos will be in a better position to render such cooperation than the group of experts which I have designated, and to which reference is made in your letter.

The Philippine Government is prepared to receive the United States Survey Mission at any time, and to place all necessary facilities at the disposal of the members to assist them in their work.

I am grateful to you for your kind inquiries about my health and most specially for the spirit of helpfulness which inspires your esteemed letter. I have never for a moment doubted the continued interest of the United States in the future and welfare of my country and people. Your personal interest has made it more patent. I pray that Providence may give us continued strength and well-being to discharge our grave responsibilities at this critical time.

Sincerely yours,

(Sgd.) ELPIDIO QUIRINO

His Excellency HARRY S. TRUMAN
President of the United States of America
The White House, Washington

Directive of President Elpidio Quirino addressed to all Department Heads and Heads of the Central Bank, Philippine National Bank, University of the Philippines, and the Rehabilitation Finance Corporation:

June 8, 1950

In view of the repeated denunciations of the existence of graft and corruption in the public service, I hereby enjoin you and the chiefs of units under you to take suitable and effective measures to eliminate or prevent graft and corruption in the (department concerned). Although mere rumors or gossips may not be taken as proof of graft and corruption, the persistence of a public and reasonable belief in its existence in any office should be sufficient reason to impel the head thereof to conduct such investigation as he may deem appropriate to establish or disprove the accuracy of the public belief. Consequently, I further enjoin that such investigation be conducted within a reasonable time but not later than 30 days from the receipt hereof. Upon the expiration of the thirty-day period herein fixed, you are to submit to this Office a complete report of the action taken on this matter by you and the chiefs of units under you.

I shall consider the failure to take the measures referred to as neglect of duty and as sufficient cause for separation from the service of the official concerned. The occurrence of duly proved cases of graft and corruption in that (department concerned) during or after the period herein fixed shall be deemed sufficient evidence of failure to take the measures herein enjoined to be taken and, unless it is satisfactorily shown that the occurrence of said cases is not due to his failure, shall subject the erring official to the risk of separation from the service and to the penalty which the law prescribes.

To the end that the chiefs of units under you may be duly apprised of this order, you are hereby directed immediately to transmit to them the contents hereof.

DECISIONS OF THE SUPREME COURT

[No. L-406. January 7, 1949]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* BIENVENIDO GARCIA (*alias* DOMINGO GARCIA), defendant and appellant.

1. CRIMINAL LAW; TREASON; EVIDENCE; ENLISTMENT AS AND SERVICE TO THE GUERRILLA INSUFFICIENT AS A DEFENSE.—The evidence presented by appellant as to his guerrilla enlistment and alleged services rendered to the guerrilla would not exempt him from criminal responsibility for the arrests he made, which were overt acts of aid and comfort he rendered to the Japanese and, because voluntarily rendered, could have been done only in pursuance of his adherence to the enemy.
2. ID.; ID.; ACCUSED'S INFLUENCE AND POWER TO THE ENEMY IN SECURING THE RELEASE OF SEVERAL PERSONS, IS NOT A DEFENSE.—By his own testimony and the testimony of some of his witnesses, appellant has shown that he was able to secure the release of several persons who had been confined by the Japanese. The merits he gained in the eyes of the persons whose release he secured cannot relieve him from criminal responsibility for the three arrests proved by the prosecution. Perhaps, the fact that he had so much influence or power with the Japanese that he was able to secure the release of several persons, should rather be taken against appellant as, instead of using said influence and power to impede the arrests of C. E., M. M. and D. T., he took active part with three Japanese soldiers in their arrests.

APPEAL from a judgment of the People's Court.

The facts are stated in the opinion of the court.

Constancio M. Leuterio for appellant.

First Assistant Solicitor Jose B. L. Reyes and *Solicitor Jesus A. Avanceña* for appellee.

PERFECTO, *J.:*

At about 4 o'clock in the afternoon of September 21, 1944, three Japanese soldiers and appellant, all armed, went to the house of Carlos Escudero, a guerrilla, at 930 Raon, Manila, and arrested him. After ransacking the house, the quartet, after tying Escudero, took him with them. Escudero has never returned. These facts have been proved by the testimonies of his wife Leonora Escudero, his mother Filomena Sanchez, and Aurelia Escudero.

On the morning of September 22, 1944, while Danilo Tagle was near the pagoda of Ocampo at a foot of the Raon bridge, Manila, he was apprehended by appellant and three armed Japanese soldiers. Appellant tied his hands at his back and brought him to the warehouse in front of Ocampo's pagoda, and appellant's reason for making the arrest was that Tagle tried to shoot the Japanese sentry at the bridge. Tagle was released after

twenty six days of confinement. His testimony as to his arrest was corroborated by Rodolfo Lopez.

On October 29, 1944, at about 9:30 o'clock in the morning, three Japanese and appellant, carrying handcuffs and revolvers, went to 1427 Abreu, Manila, and arrested Mario Martinez, a guerrilla, from whose possession a revolver hidden in the house was taken by the Japanese who, by the way, mistook him for an American, because Martinez was of light complexion and had reddish hair. At the time Martinez was arrested, his brother Fernando Martinez arrived, to pay a visit to his parents who were living there. He was also arrested and the two brothers, with tied hands, were taken away and confined in several places. Fernando was released about three days later, but Mario was never seen again by his family. These facts have been proved by the testimonies of Fernando Martinez and Maria Bernardo, wife of Mario.

Several other witnesses for the prosecution, Claudia Torres de Tsugawa, Fernando P. Castelo, Jose M. Lichauco, Tirzo Diaz, Estrella Alfon Rivera and B. L. Rivera testified that at about the time the above arrests had taken place, appellant was a spy in the service of the Japanese military police, and he himself said so expressly to some of said witnesses and even invited Diaz and Rivera to become Japanese spies.

Appellant denied having taken part in any of the three arrests mentioned by the witnesses for the prosecution.

According to him, he went to the house of Carlos Escudero because he was called by his relatives to intervene in his behalf, so that he might not be arrested by the Japanese but, unfortunately, he came late; and the mother and wife of Escudero got angry at him because he was not able to secure the release of Escudero when days after the arrest he was requested by them to work for said release.

As regards Danilo Tagle, he said that he was only called by the Japanese after the arrest had been effected, merely to identify Tagle. Although not acquainted with him personally and having learned that Tagle was working in the Selecta Ice Cream Factory, he vouchsafed him, telling the Japanese that Tagle was a good person.

As regards the arrest of Mario Martinez, appellant denied any knowledge.

There is no question that appellant was in the service of the Japanese in 1944. He himself has testified about the fact, although he says that he was compelled to do so after he was tortured by the Japanese and compelled to enter their service, as he in fact was a guerrilla, and that, while serving the Japanese, he gave money contributions as well as information about the Japanese, to the guerrillas.

Appellant alleges that, for having been outspoken in his criticism of the government under the Japanese regime, he was arrested and tortured by the Japanese in Lipa, his hometown, for which reason he transferred to Manila, where he was again arrested, while carrying a revolver, and tortured by the Japanese, who later compelled him to enter their service.

His story, including the allegation that in Manila, before his arrest by the Japanese, he had license to carry revolver as a merchant, does not seem credible. But even if we should accept it at its face value, it does not detract an iota from the truth of the three arrests as narrated by the witnesses for the prosecution, who had no motive to falsely testify against appellant.

The only witness for the prosecution alleged by appellant to have had a grudge against him, is Estrella Alfon Rivera. According to appellant, said witness bought rice and, lacking money to pay, requested appellant to guarantee in her behalf that the price will be paid to the vendor at an agreed time, but because said witness failed to make the payment, appellant took the rice from her and sold it to another. Aside from the improbability of this story, it has not been corroborated by appellant's wife, who in turn alleged that Estrella Alfon Rivera was angry when he collected from her a debt for a dress ordered by said witness from Isabel Formilleza. There is no reason to believe that Estrella Alfon Rivera had not told the truth, besides the fact that seven other witnesses are the ones who testified about the arrests undertaken by appellant in the company of three armed Japanese soldiers.

The evidence presented by appellant as to his guerrilla enlistment and alleged services rendered to the guerrilla would not exempt him from criminal responsibility for the arrests he made, which were overt acts of aid and comfort he rendered to the Japanese and, because voluntarily rendered, could have been done only in pursuance of his adherence to the enemy.

By his own testimony and the testimony of some of his witnesses, appellant has shown that he was able to secure the release of several persons who had been confined by the Japanese. The merits he gained in the eyes of the persons whose release he secured cannot relieve him from criminal responsibility for the three arrests proved by the prosecution. Perhaps, the fact that he had so much influence or power with the Japanese that he was able to secure the release of several persons, should rather be taken against appellant as, instead of using said influence and power to impede the arrests of Carlos Escudero, Mario Martinez and Danilo Tagle, he

took active part with three Japanese soldiers in their arrests.

The facts proved constitute the crime of treason as punished by article 114 of the Revised Penal Code and the appealed judgment, sentencing appellant to *reclusión perpetua* with the accessory penalties of the law and to pay a fine of ₱10,000 and the costs, being in accordance with law, is affirmed.

Moran, C. J., Parás, Feria, Pablo, Bengzon, and *Tuason, JJ.,* concur.

MORAN, *C. J.:*

I certify that Mr. Justice Briones voted for the affirmance of judgment in this case.

Judgment affirmed.

[No. L–1449. January 7, 1949]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* JOSE DOSAL ET AL., defendants. DANIEL ABOGA, appellant.

CRIMINAL LAW; AMNESTY, KILLING BY GUERRILLAS MOTIVATED BY THE BELIEF THAT THE VICTIMS WERE GIVING AID AND COMFORT TO THE ENEMY.—The crime imputed to the appellant comes within the terms of the Amnesty Proclamation, because the killing of the victims was motivated by the belief on the part of the authors of the crime that the victims had been aiding the Japanese by procuring food supplies for them.

APPEAL from a judgment of the Court of First Instance of Samar. Fernandez, J.

The facts are stated in the opinion of the court.

Severiano B. Orlina for appellant.

Assistant Solicitor General Manuel P. Barcelona and *Solicitor Honorio Romero* for appellee.

FERIA, *J.:*

There is no dispute that Marcelo Urbayan and Valentin Urbayan were on the evening of May 16, 1944, taken from their home in Santa Rita, Samar, to the mountains of Tagakay and killed there on the following morning by a group of about twenty guerrilleros; that they did not take anything from the house of the victims, and that the appellant Daniel Aboga, one of the group, was a guerrilla lieutenant.

Agapito Patrimonio is the only witness who testified that the appellant was the one who killed Marcelo Urbayan with a bolo and Valentin Urbayan was killed by Laureano Bolito (15). This witness said that he and Inocencio Bolito, the other witness for the prosecution, were present

at the time of the killing because both of them were captured by the same group on May 12, 1944, and were accompanying their captors when the latter took the Urbayans from their house to the mountains and killed them there; and that the appellant was the leader because he was the right hand of Claudio Bolito, father of Laureano Bolito (17, 18).

But Inocencio Bolito who was mentioned by Agapito Patrimonio as his companion, and presented also as a witness for the prosecution, belied the testimony of Agapito Patrimonio and testified that he was present when Marcelo Urbayan was stabbed to death by one Laureano Bolito and not by the appellant, and that Valentin was killed by a soldier or guerrillero from Leyte under the command of Jose Dosal, *who was the leader of the group* (58); that among those in the group were the defendants Daniel Aboga, Laureano Bolito, Tarcelo Bucatcat, Cornelio Geres and Pablo Paldez; that Tarcelo Bucatcat was the one who tied Marcelo Urbayan, and Cornelio Geres held Valentin when they were taken from their house; that Marcelo Urbayan was boxed by Raymundo Bucatcat, Marcelo Bucatcat, Laureano Bolito and Cipriano Paldez, and that the appellant was only looking at them, and did not help them or maltreated the Urbayans. (33–35).

Tarcelo Bucatcat and Cornelio Geres, corroborated the testimony of Inocencio Bolito relating to the persons responsible for the killing of Marcelo and Valentin Urbayan, and the fact that Jose Dosal was the leader of the group, and not the appellant.

Tarcelo Bucatcat testified that Valentin Urbayan was killed by a guerrillero from Leyte whose name he does not know, and Jose Dosal was the patrol leader of the guerrillas (74, 79), and Marcelo Urbayan was killed by Laureano Bolito "for the reason that they were pro-Japanese" (73), "Because I saw with my own two eyes that they were purchasing foodstuffs to be delivered to the Japanese in Tacloban. * * * The launch operated by the Japanese used to go to Libtong where the Urbayan family was and Marcelo and his brother Loloy Urbayan were the ones loading foodstuff for the Japanese" (75). And Cornelio Geres declared that the Urbayans were kidnapped by the guerrilleros from Leyte, of whom he was a corporal, under the command of Jose Dosal who was the leader of the group (37); and that Marcelo Urbayan was killed by Laureano Bolito and Valentin by a soldier of Jose Dosal, for being pro-Japanese, "Because one time they were at Tagakay, I was also there. There they bought foodstuffs and all those foodstuffs that they purchased were brought to their house. Loloy Urbayan was the one who got them and dilevered them to the Japanese" (85, 86).

The appellant Daniel Aboga admitted that he was one of the group of guerrilleros who went to the house of Marcelo and Valentin Urbayan and took them to the mountains, but denied having taken any part in their killing; that he had no personal grudge against the Urbayans, but was mad at them because, after being members of the guerrilla organization, they became pro-Japanese; that he did not kill Marcelo Urbayan; that Laureano Bolito was the one who killed Marcelo, and Valentin Urbayan was killed by a guerrillero soldier from Leyte; that the appellant went once in February 1944, "to the fish corral of Valentin Urbayan to buy fish and he was ready to pay for them, but the Urbayan refused to sell fish to them and accept the payment, because they were waiting for the launch which was to take the fish, and then the appellant told them that if they were inclined to favor the Japanese they should also do the same to the guerrillas" (55, 56); that it is not true that he had a quarrel with the Urbayans at a cock-pit in March 1944, because knowing them to be pro-Japanese, he avoided going to the cock-pit for fear of being betrayed by them who were pro-Japanese (57); that the Japanese used to go once a month to the Urbayans' fish corral to get fish (67); and that he personally saw three times the Japanese in a launch accompanied by Loloy Urbayan take foodstuffs from Urbayans' place, and that once the Japanese, accompanied by Marcelo and Valentin Urbayan, went to the camarin of Arteche which they burned (64); that from January to May 1944, he did not receive any order from their commander-in-chief, Pedro Arteche, to capture the Urbayans, but in May when the group of guerrillas from Leyte arrived they were the one who decided to take Marcelo and Valentin Urbayan as wanted for supplying foodstuffs to the Japanese in Tacloban (71).

The testimony of Daniel Aboga, the appellant, Tarcelo Bucatcat and Cornelio Geres, about the Urbayans furnishing fish to the Japanese, is corroborated by the witness for the defense Fortunato Japson, who was one of the stockholders of the corporation that owned the cock-pit wherein the alleged fight on January 15, 1944, between Marcelo Urbayan and the appellant, testified to by Eugenio Urbayan, took place. This witness testified that "Once he happened to pass by the Urbayans' place, and he saw three small barrels loaded with foodstuffs. I asked Valentin Urbayan if he could allow me to buy some. He answered that he could not because those were to be delivered to the launch," and the launch belonged to the Japanese "because it was crewed with Japanese together with Loloy Urbayan" (100). And by the witness Faustino Nacernope who testified that he was a partner of

Valentin Urbayan in the fish corral above referred to, and that since the first catch of fish in said corral, Valentin Urbayan told him not to sell the big fishes, for Loloy his son would come to get them and sell them to the Japanese, and on January 3, they got the big fishes and loaded them in a Japanese launch (104, 106).

In view of the testimony, not only of several witnesses for the defense but also of one of the prosecution, contradicting the testimony of Agapito Patrimonio, the Solicitor General in his brief does not pretend that the appellant had any active intervention in the killing of the Urbayans. He only contends that the appellant is guilty of the crime committed by his companions because there was a conspiracy between them, and although he was "less than three meters away at the time of the killing did not attempt to prevent the same."

Without necessity of discussing and deciding whether or not conspiracy, not only to kidnap but also to kill the victims, may be inferred from the fact that the appellant was one of the group of guerrillas who went to kidnap the Urbayans, we are of the opinion that the crime imputed to the appellant comes within the terms of the Amnesty Proclamation, because the killing of the victims was motivated by the belief on the part of the authors of the crime that they had been aiding the Japanese by procuring food supplies for them. This fact is testified to not only by the appellant (67–70) but also by Tarcelo Bucatcat (73–75), Cornelio Geres (85, 86), Fortunato Japson (100) and Faustino Nacenope (104, 106), whose testimonies were quoted above.

The conclusion of the lower court and contention of the Solicitor General that the motive why the Urbayans were killed was because there existed a resentment between the victims and the appellant, is not borne out by the evidence. Eugenio Urbayan, brother and son, respectively, of the deceased Marcelo and Valentin, testifies that on January 15, 1944, the appellant Daniel Aboga and his two coaccused Bucatcat and Geres had a fist fight with the deceased Marcelo Urbayan in the fish corral of the Urbayans "because the three accused got fish from my brother and the payment they made was not reasonable" (26, 27), and that in March, 1944, "in the fight between their cock and ours both roosters were badly wounded, however our rooster was still in the attitude of fighting pursuing theirs. Their rooster was about to run away but they did not wait for the decision of the referee and they took their rooster. * * * On account of that my brother tried to make his own stand but these accused especially Daniel Aboga did not agree. What he did, he took his rooster and smashed it at my brother.

Then I intervened. * * * After smashing the rooster at my brother he also tried to smash it at me but I was able to escape" (28, 29).

The above quoted testimony of Eugenio Urbayan, who was naturally interested in the conviction of the appellant whom he believed was responsible for the death of his brother and father, because he was with the group of guerrillas who kidnapped and took them to the mountains never to return, is contradicted by Fortunato Japson (97, 98) and Faustino Nacenope (107). But even assuming that it is true, the offended party or parties in the two incidents related by the witness would have been the Urbayans and not the appellant, and therefore the former were the ones who ought to have had resentment against the appellant, and not *vice versa.*

As to the alleged fight because the payment made by the appellant and his two companions for the fish they got from Marcelo was not reasonable, why should the appellant kill not only Marcelo, but also Valentin Urbayan, the owner of the fish corral, who did not participate in the fight, the natural presumption being that Marcelo must have come out the loser in the fight for he was alone against three?

With respect to the supposed fight in the cock-pit, is it conceivable that the appellant be the one to take revenge against Marcelo Urbayan after he had succeeded in having his losing rooster declared the winner or at least tied with that of the Urbayans, and had smashed his rooster at Marcelo? If the defendant had a grudge against the Urbayans because of those incident, is it reasonable that he did not take active part, by word or by deed, in the act of taking them from their house and killing them in the mountains? As the appellant was not the leader of the group, as it is clearly established by the evidence for the prosecution and defense, does it not stand to reason that the leader of the group, Jose Dosal, had ordered the killing of the Urbayans, without any other plausible reason, but just to please the appellant on account of the above related incidents the latter had with the former?

In view of all the foregoing, the only reasonable conclusion warranted by the evidence is that the motive of the killing of the Urbayans was the belief entertained by the persons responsible therefor that the Urbayans were giving aid and comfort to the enemy.

We hold that the appellant comes within the terms of the Amnesty Proclamation, and therefore the appealed judgment should be reversed, and the appellant released, without costs. So ordered.

Moran, C. J., Parás, Pablo and Bengzon, JJ., concur.

PERFECTO, *J.*, concurring:

Appellant Daniel Aboga is prosecuted with several others for the crime of double murder, committed on May 17, 1944, in Santa Rita, Samar which caused the death of Marcelo Urbayan and Valentin Urbayan. The lower court found him guilty with Tarcelo Bucatcat and Cornelio Geres and sentenced the three of them to *reclusión perpetua* and to indemnify the heirs of each of the deceased in the sum of ₱2,000.

The witnesses for the prosecution testified substantially as follows:

Carmelita Jazmines Urbayan, 26, widow, school teacher, testified that Marcelo Lim Urbayan and Valentin Urbayan were respectively, her husband and father-in-law. Marcelo was a guerrilla third lieutenant under Pedro R. Arteche who, on May 17, 1944, Wednesday, was kidnapped in Libton. (3–4). "In the evening, while I was tending my child, I heard barking of dogs. My husband was awakened and he went to the door. He found persons at the foot of our stairs and asked them what is the purpose in coming to our house. Nobody answered but after a while somebody responded and may be addressing to his companions said 'Come down' and 'tie this man.' My husband did not go down immediately. We shouted for help. We both cried and shouted for the help of our father-in-law. Then we could hear voices of those men that cried, 'Fire! Fire!' and then our house was stoned. I could hear the voice of my father-in-law. Those men said, 'Try to catch him,' and that was when my husband found out that my father-in-law was downstairs in our house, he descended with our second child Marcelo Urbayan, Jr. When they were down the yard of our house I could hear my husband said, 'Please do not punish me, we are just brothers.' I could hear them ordered to tie the hands of my husband. Then they tied him and left Libtong. After a while my child came up alone and it was already very silent. My husband did not return anymore. (5–6). My father-in-law was living near our house. He was a paralytic. He could walk slowly." (7). Although the witness knows by face Daniel Aboga, Tarcelo Bucatcat and Cornelio Geres. "I do not know their names. (8). This Daniel Aboga always come to our fish corral and buy fish." (9).

Agapito Patrimonio, 57, married, farmer, testified that on May 12, 1944, he was kidnapped and brought from place to place in the mountains. On May 15, he was brought to San Andres. In the evening of May 16, three persons were kidnapped at barrio San Andres, they were Jovencio Bolito, Zacarias Hipos and Panfilo Luway. (11). The three accused took part in the kidnapping. "Upon reach-

ing Tagakay the persons who were kidnapped were investigated. Jovencio Bolito was saved, the two others Zacarias Hipos and Panfilo Luway were killed. The following day, May 17, I heard conversation at noon that they were going to the Urbayan's place. I could only recognize these three accused. Their conversation that time was that they were going to the place of the Urbayan family because they are well-to-do. They have fish corral and they have animals." (12). Jovencio Bolito and the witness, who were prisoners, went with the group of the accused to the place of the Urbayan family on May 17 in the evening. There were 22 persons in the group. The two Urbayans, father and son, were kidnapped and brought to the mountains to Tagakay. Marcelo and Valentin Urbayan had their hands tied. The group took a rest beyond the house of Cipriano Paldez. The following morning, May 18, the two Urbayans, father and son, were killed. The witness was present at the killing. Before being killed, Marcelo Urbayan has been maltreated at a rocky place in Tagakay. (13–14). Marcelo was killed by Daniel Aboga, and Valentin by Laureano Bolito. Marcelo was killed by Daniel Aboga with a bolo. Valentin was killed by Laureano Bolito also with a bolo. "From the time they were still alive until they fell down and killed I was there looking at them." (15).

After the killing the accused went down to a house and prepared their food. They slept on the mountains using leaves of *pacol* as mat. (16). None of them possessed any firearm. They were only provided with bolos. Cipriano Paldez and Laureano Bolito used to bring bananas, fish and other foodstuffs. The witness remained with them one week. Daniel Aboga was the leader during the Japanese occupation. The witness did not tell to any authority or anybody the facts he testified. (18). He made a report only after the widows of the Urbayans found him in Talalora. (19). The witness does not know if the accused had stolen anything from the Urbayans before or after the killing. The night was very dark and the witness did not know what happened in the house of the Urbayans. The witness did not report his being kidnapped to any authority until after the war was over. (20–21).

Eugenio Urbayan, 37, married, businessman, testified that Marcelo was his brother and Valentin his father. During the Japanese occupation they were living in Libtong, Hinangutdan, Santa Rita. The witness was a lieutenant in the resistance movement. (22). Exhibit A is a special order regarding the appointment of Marcelo as third lieutenant. (23). Exhibit D is an affidavit filed by Ramon Peñada, guerrilla first sergeant, who was the commanding officer of Marcelo. (24). During the oc-

cupation of the witness used to meet the three accused who were gamblers. (25). The accused had differences with "my brother Marcelo because the habit of these three accused whenever they reached up to the fish corral they would get fish and pay the price they wanted to and naturally my brother Marcelo had to call their attention." On January 15, 1944, they had a quarrel. (26). They came to exchange blows but "did not last because we intervened in the fight." At last "this Daniel Aboga told my brother Marcelo Urbayan 'We will see.'" The reason for the fight was that the accused would not pay a reasonable price for the fish they had taken. Afterwards there occurred another fight between Marcelo and the accused at the cock-pit. (27). Daniel Aboga was the *soltador* of the rooster of the other side and Marcelo Urbayan that of the Urbayan side. "In the fight between their cock and ours, both roosters were badly wounded, however, our rooster was still in the attitude of fighting pursuing theirs, which was about to run away, but they did not wait for the decision of the referee and they took their rooster." The incident took place in March, 1944. Marcelo tried to make his rooster stand. Daniel took instead his rooster "and smashed it at my brother. Then I intervened. After smashing the rooster of my brother, he also tried to smash it at me but I was able to escape. Some persons intervened in that fight and the fight did not come to a worst end." Valentin Urbayan was paralytic although he could still walk. (28–29).

Jovencio Bolito, 22, student, testified that in May, 1944, Tuesday evening at eight o'clock "I was in the house of my uncle Hermenegildo Dagsa. At about 10 o'clock there was a person who went up by the name of Laureano Bolito. Then at that moment three other persons followed by the names of Exequiel Bolito, Cipriano Paldez and Cornelio Geres. (32). They took us by force to the back of the school house of barrio San Andres. This group of men took us to the mountain of Tagakay which was called Pangpang. We stayed there until morning. On Wednesday, at about 6 o'clock we proceeded to the barrio of Tagakay just to take our supper. After taking our supper we went to the Maharas River. We rode in a boat to the point near Hinangutdan. Near that point we left the boat and we proceeded to the house of Marcelo Urbayan. There were twenty persons in the group. (33). Among those present in the group were Tarcelo Bucatcat, Cornelio Geres and Daniel Aboga. "Laureano Bolito and Cipriano Paldes went up the house of Marcelo Urbayan and they told Marcelo Urbayan to go down. Marcelo did not go down. Instead he called his father. His father Valentin Urbayan went to the house of Marcelo. When he was there this group of men began to tie Marcelo

Urbayan." Raymundo Bucatcat tied Valentin. Daniel Aboga was near but he did not maltreat Valentin. He did not help to tie him. Cornelio Geres was holding Valentin. (33–35). Marcelo, upon hearing the voice of his father, went down carrying one of his children. The moment he reached the ground, he gave the child to the wife and he was also tied and boxed by Raymundo Bucatcat, Tarcelo Bucatcat, Laureano Bolito and Cipriano Paldes. Daniel Aboga was only looking at them. He did not help. He did not maltreat. We went to the point where our boat was left. Then all of us rode on the boat at the point of Maharas where we anchored. When we were in that place, we went again to the mountain of Tagakay. There we stayed until morning. The following morning at 6 o'clock Claudio Bolito ordered us to go to the high point in the mountain and there these two persons were killed." That was on May 18, 1944. The place was Pangpang. When Marcelo and Valentin Urbayan "were already in the mountain, they were told to stand up side by side." (36–37). The order was given by Laureano Bolito who later stabbed twice Marcelo Urbayan. The latter fell down. He was stabbed with a sharp bolo at his stomach. There were present Tarcelo Bucatcat, Cornelio Geres, Raymundo Bucatcat, Cipriano Paldes, Daniel Aboga and others. Marcelo died after about three minutes. Valentin Urbayan was also killed. (37–38). "I do not know the name of that fellow who killed Valentin Urbayan, but if I will see his appearance I will know him." He is not among the three accused. "He stabbed Valentin Urbayan on the breast twice." He used a sharp bolo. Valentin was already old. When the unknown person stabbed Valentin, the three accused were there looking around. They were less than a meter from the aggressor and the victim. (39). The witness was at about three meters from them.

Carmelita Jazmines Urbayan, recalled to the witness stand, identified Exhibit E as the death certificate of her husband, issued by the municipal treasurer of Santa Rita, and Exhibit F as the oath of enlistment of Marcelo L. Urbayan with the guerrilla. (41 & 42).

Calixto Deñoso, 43, married, businessman, testified that during the Japanese occupation he was a guerrillero in the barrio of Bagajope, Babatngon, Leyte, having been appointed Captain of the Philippine Militia by Col. Gregorio Mariano. (44). At that time, while the witness was at the cockpit, he noticed a commotion, because the Urbayan brothers were fighting with Aboga and Geres. The people scattered because of the fight. (45).

Eduardo Villafuerte, 42, married, investigator of AFWESPAC MPs, testified that during the Japanese occupation he was first lieutenant, plans and training officer,

in the sector of Tacloban-Babatngon. (46). That in the middle of January, 1944, when the witness was commanded to have a survey in his sector, he went to the fish corral of Marcelo Urbayan, where he saw a fighting between Marcelo and Daniel Aboga. The trouble was about buying fish. (47).

The witnesses for the defense testified in substance as follows:

Daniel Aboga, 26, married, testified that Marcelo and Valentin Urbayan are dead. They were pro-Japanese. (49). They were killed, because they bought foodstuffs such as palay, corn, camote, pigs and chickens, and others and which they delivered to the Japanese. (50). The witness was a guerrilla lieutenant. Exhibit 1 is his appointment, issued by Leocadio S. Espiña. Exhibit 2 is his oath of enlistment, sworn to before Iñigo Zeta. Exhibit 3 is his oath of office as non-commissioned officer. (52). It was sworn to before Pedro R. Arteche, Commander in Chief of the Philippine Guerrilla Forces. Exhibit 4 is his oath as third lieutenant, sworn to before Maj. Conrado Adolfo of Santa Rita. (53). Exhibit 5 is his oath of office as second lieutenant sworn to before Leocadio S. Espiña, who was then the Infantry Adjutant General of the organization. (54). Exhibit 6 is a letter of recommendation issued by Lieutenant Tavera addressed to Lieutenant Lareza for the witness to be admitted in the organization, the recommendation having been endorsed to Lieutenant Cabrera. Exhibit 7 is a letter of recommendation issued by Lieutenant Cinco, properly endorsed by Maj. Luciano Abia. (55). Marcelo Urbayan was also a guerrilla officer. When they heard that the guerrilla organization was disbanded, to avoid the mopping up operation of the Japanese, they started to gather foodstuffs for the Japanese. It is true that the witness went to the fish corral of Valentin Urbayan with the purpose of buying fish and he was ready to pay the price, but the Urbayans refused to accept the payment because they were waiting for the launch which was to take the fish. (56). Then the witness told them if they were inclined to protect the Japanese they should do the same to the guerrilla soldiers. It is not true that the witness had a quarrel with the Urbayans at a cockpit in March, 1944, because the witness, knowing him as pro-Japanese, avoided going to the cockpit for fear of being taken by the Urbayans, who were pro-Japanese. (57). The witness has no personal grudge against the Urbayans, but was mad at them because, after being members of the guerrilla organization, they turned to become pro-Japanese. It is not true it is the witness, according to Agapito Patrimonio, who killed Marcelo Urbayan. It was Laureano Bolito who killed Marcelo and the one who killed Valentin Urbayan was a

soldier from Leyte. On that occasion there were 20 persons including Patrimonio. Among them were 13 soldiers from Leyte, one of them was Jose Dosal. (58). The guerrillas were carrying firearms. (59). In the traveling detachment there were 2 rifles and also revolver and shotgun. (62). The detachment was in Tagakay, and it had no encounter with the Japanese. Whenever the Japanese passed through, the guerrillas avoided them so as to spare the civilians from being molested. (63). Once the Japanese, accompanied by Marcelo and Valentin Urbayan, went to the camarin of Arteche which they burned. Valentin Urbayan was able and had good physique built. (64). Arteche was captured in 1944. He was captured in January, 1944. (65).

From January to May, 1944, the witness did not receive any order from Arteche to capture the Urbayans. The witness was then accompanying the Japanese. (65). The witness communicated the fact to Arteche. The witness went once in February to the fish corral of the Urbayans. He never returned to avoid being caught by the Japanese. (66). The witness was afraid of the Urbayans should the Japanese apprehend him and brought to Tacloban. The Japanese went once a month to the Urbayans' fish corral to get fish. (67). The witness had not decided to take the Urbayans from January to April because he had not received any answer from his chief. In May when the group of guerrillas from Leyte arrived they are the ones who decided to take Marcelo and Valentin Urbayan as wanted once for supplying foodstuffs to the Japanese in Tacloban. (68). He saw three times the Japanese in a launch accompanied by Loloy Urbayan taking foodstuffs from the Urbayans' place. (70).

Tarcelo Bucatcat, 22, married, testified that Marcelo and Valentin Urbayan are dead. He saw them killed, because he was with the guerrillas. With the guerrilla group, composed of thirteen members from Leyte and six from Samar including the witness. (72). Exhibit 8 is the copy of the oath of enlistment of the witness. Valentin Urbayan was killed by a guerrilla from Leyte, whose name he ignores and Marcelo Urbayan was killed by Laureano Bolito, "because they were pro-Japanese." (73). Jose Dosal was the patrol leader of the guerrillas. In the killing "I did not take any participation." The purpose of the guerrillas in going to the place of the Urbayans "was not precisely to rob but they went there because they wanted Marcelo and Valentin Urbayan, they being pro-Japanese." (74). The testimony of Eugenio Urbayan as to a quarrel in the cockpit in barrio Libtong between Daniel Aboga and Marcelo Urbayan is not true. The Urbayans were pro-Japanese, "because I saw with my two eyes that they were purchasing foodstuffs to be delivered

to the Japanese in Tacloban." The launch operated by the Japanese used to go to Libtong where the Urbayan family was and Marcelo Urbayan and his brother Loloy Urbayan were the ones loading the foodstuffs for the Japanese." (75). "I saw them, Valentin Urbayan and Marcelo Urbayan going around at Libtong for the purpose of buying foodstuffs for the Japanese. That was what they told me." (77). The witness cannot remember when the Urbayans had brought foodstuffs to the Japanese, "because this incident took place a long time ago." (78). The witness went along with the group which kidnapped the Urbayans because I was told by Jose Dosal to go along with them. (79). Although the witness knew the Urbayans beforehand, he testified before provincial fiscal Apostol that he came to know them on the night of May 17, when they were taken, which is not true, "it is because I was afraid of the Kempei Tai. I was between two Japanese Kempei Tai when I was investigated." (80). He also knew Daniel Aboga since the beginning, but on page 2 of his affidavit, Exhibit G, he testified that he did not know him "because I was made to look for him and should he be found, he would be killed." In the same affidavit the witness testified falsely that he did not know what was done to the Urbayans "because should I say that I am a member of the guerrillas they would cut my neck." (81). The witness was apprehended by the Japanese at barrio Tagakay. He was reported by Marcelo Urbayan and Eugenio Urbayan. "I was brought here in Catbalogan and investigated. In the investigation I stated that I was kidnapped by the guerrilleros. I did not say that I was a member of the guerrilla organization because I was afraid. I was put in prison by the BCs for about five months." After the investigation he was released and continued reporting to Major Patrimonio. (82). When the Urbayans were kidnapped the guerrilleros from Leyte were carrying with them guns. "I was carrying with me a gun given to me by Major Patrimonio." Although they had firearms the Urbayans were stabbed, because that was the order of Jose Dosal. (83).

Cornelio Geres, 22, married, testified that Marcelo and Valentin Urbayan are dead. "They were kidnapped by Jose Dosal and I was with them." Marcelo Urbayan was killed by Laureano Bolito and Valentin Urbayan was killed by one of the soldiers of Jose Dosal. They were killed because they were pro-Japanese. (85). They bought foodstuffs and brought them to their house. Loloy Urbayan was the one who got them and delivered them to the Japanese. (86). The witness altho was present in the killing of the Urbayans, he took no personal participation in it. (88).

Fortunato Japzon, 59, married, testified that a cockpit in Hinangutdan was owned by a corporation of which he was a big stockholder. On March 14, 1944, cockfighting was held. (97). Nothing happened on that day between Daniel Aboga and Marcelo Urbayan. The witness was the *casador*. Valentin Urbayan and Marcelo Urbayan were living in Hinangutdan and their occupations were agriculture and fish corral. (98). "I do not know where they sold their products in Tacloban." (99). One time the witness happened to pass by the Urbayans' place and he saw three small *barotos* loaded with foodstuffs. "I asked Valentin Urbayan if he could allow me to buy some. He answered that he could not because those were to be delivered to the launch." The launch belonged to the Japanese "because it was crewed with Japanese together with Loloy Urbayan" and that was the only time the witness saw the Urbayans loading foodstuffs for the Japanese. (100).

Faustino Nacenopa, 58, married testified that he was a partner of Valentin Urbayan in a fish corral and on January 3, 1944, he saw that the big fishes were loaded in a launch of the Japanese. (104–106). On January 15, there was discussion between Daniel Aboga and Marcelo Urbayan of the fish corral because Marcelo Urbayan would not sell to him big fishes, but only the small ones. (107).

Carmelita Jazmines Urbayan, recalled in rebuttal, testified that her husband, Marcelo Urbayan, was not a pro-Japanese. (113). It is not true that Loloy Urbayan used to go to the barrio in a launch. "From the time we evacuated on December 16, 1941, we did not know the whereabouts of Loloy until the liberation that was on May 3, 1945." He did not go to Libtong even once. (114). The river in the barrio is shallow it is navigable by *barotos* but not by launches. Her husband never went with the Japanese. It is not true that Valentin Urbayan went with the Japanese "he could hardly walk in the house how much more to go out. He is deaf." (115).

Eugenio Urbayan, also in rebuttal, testified that it is not true that Marcelo had any connection with the Japanese. His father Valentin "could not go with the patrol because he was sickly unless he be dragged." (117). Fortunato Japson has a grudge against the Urbayans regarding a land transaction. (118).

Matea Lim Urbayan, testified that her husband Valentin Urbayan was suffering from paralysis and was shaking whenever he stands, and he was thus afflicted ever since 1941. He could go down the house with a cane. It is not true that Valentin accompanied once Japanese soldiers in a patrol. (120 & 121).

Exhibit 6 is a communication dated December 31, 1941, addressed by Lt. B. Quejado to Lt. L. Laresa, advising the

latter that the bearer, Daniel Aboga, desires to be enlisted. Below the communication there is an indorsement made by Lt. Laresa to Lt. Tabberasah, requesting that Daniel Aboga be assigned if needed.

Exhibit 1 is a special warning issued by Col. Leocadio S. Espiña, dated May 4, 1943, warning the PC officers to avoid all Japanese and their agents because first lieutenant Florentino Nerviol was caught by the Japanese on May 1, 1943, because special orders No. 20 of 1943, identifying him with the guerrillas, was found in his pocket book, and the Japanese must have already been furnished with a list of guerrilla officers from Tacloban. Among the officers warned is second lieutenant Daniel Aboga.

Exhibit 2 is the oath taken by Daniel Aboga on October 15, 1942, for his enlistment in the guerrilla forces in Samar.

Exhibit 3 is the oath of office of Daniel Aboga as master sergeant of the guerrilla forces, dated December 8, 1942.

Exhibit 4 is the oath of office of Daniel Aboga as third lieutenant of infantry of the guerrilla forces dated January 11, 1943.

Exhibit 8 is a certified copy of the oath of enlistment in the guerrilla forces of Tarcelo Bucatcat, dated December 11, 1942, certified by Jesus F. Arteche on December 6, 1946.

Exhibit 9 is the copy of the oath of enlistment in the guerrilla of Cornelio Geres dated October 1, 1942 and certified by Jesus F. Arteche on December 6, 1946.

Exhibit A is a certified copy of an official announcement issued on March 12, 1943 by Colonel Leocadio S. Espiña about the promotion of Marcelo Urbayan to the rank of third lieutenant of the guerrilla forces.

Exhibit B is the oath of enlistment with the guerrilla forces of Eugenio L. Urbayan dated December 15, 1942.

Exhibit C is a certification issued by Hermenegildo Y. Llemos, ex-major of the Philippine guerrilla forces, on January 20, 1945, to the effect that Eugenio Urbayan served in the guerrilla forces at Samar.

Exhibit E is a certification issued by the civil registrar of Santa Rita, Samar, to the effect that in the registry book it appears that Marcelo L. Urbayan died on May 17, 1944, kidnapped and killed by unidentified bandits, his occupation being that of an officer of the guerrilla forces.

Exhibit F is the oath of enlistment with the guerrilla forces of Marcelo L. Urbayan dated December 16, 1942, the copy being certified to by third lieutenant Juan B. Cananua.

From the evidence it appears that, although appellant took part in the taking of Valentin and Marcelo Urbayan, he took no part in their killing. Probably, responsibility could be exacted from him for having taken part in the

taking of the two victims, if accused for kidnapping or illegal detention, but he is charged in this case with the offense of double murder. Not having participated in the killing and no evidence having been presented to show that the killing had been planned or the subject of a conspiracy in which appellant took part, he cannot be held responsible for the killing.

If the dispute that appellant had with Marcelo Urbayan regarding the fish he wanted to buy from the latter's corral and his quarrel with him in a cockpit had been the motives which induced appellant to take part in the taking of the two Urbayans, it has not been shown why Valentin Urbayan, Marcelo's father, had to be included, when he had nothing to do with said dispute and quarrel, and no explanation was given why all the companions of appellant had to take part in the taking and killing of the two Urbayans. If appellant's desire for revenge was the motive for the killing, he could have achieved his purpose without the need of the company of many persons, of the ceremony of conducting the victims from their place to another for execution, while it would be incomprehensible why appellant himself did not take part in the killing.

The evidence rather shows that the taking and killing of the two Urbayans were effected in furtherance of the the resistance movement, it appearing that the victims were pro-Japanese, whom they had been furnishing fish, and the group which had taken and executed them were members of the guerrilla. Consequently, even if appellant could be held responsible for the killing of the two Urbayans, he is entitled to be acquitted, as the killing is covered by the Guerrilla Amnesty Proclamation. That appellant's claim to the benefits of the amnesty has been rejected twice by two amnesty commissions on December 6, 1944, and on January 10, 1948, respectively, is of no consequence in view of the evidence on record and of the power granted to this Court by the proclamation.

We concur in the reversal of the appealed judgment and in the order that appellant be released upon promulgation of the decision.

TUASON, *J.*, dissenting:

I think the judgment of the lower court should be affirmed. By the preponderance of evidence, if not beyond reasonable doubt, it has been shown that the motive behind the murders was purely personal. The trial judge points out the inherent improbability of the defense, in his carefully written and well considered decision:

"We shall now examine the facts of the case at bar to find out whether the offenders herein fall under the purview of the amnesty proclamation.

"It is a fact that the deceased Valentin Urbayan and Marcelo Urbayan evacuated to Libtong on 16 December 1941, immediately

after the outbreak of the war and before Leyte and Samar were occupied by the enemy (on 24 May 1942). They brought with them their families, built their houses and continuously lived in said place until they were taken from their homes and later killed on 17 May 1944, by the herein accused and their companions. Both deceased never went to any area occupied by the Japanese; and the Japanese never actually occupied Libtong which was, together with its vicinities, under the control and influence of the guerrilleros. Valentin Urbayan was paralytic and could not walk, and hardly with the aid of a cane. He was deaf. Marcelo Urbayan was a member of the guerrilla organization (of which the late Pedro Arteche was the head) with the rank of third lieutenant from 12 March 1943 (Exhibit A), before which, or on 16 December, 1942, he was enlisted and had properly subscribed to the oath of enlistment (Exhibits B and F). That he was a lieutenant of the guerrilla organization was admitted by the defense. The Urbayans had a fishcorral during all that time to which fishcorral the herein defendants went some times to buy fish. Marcelo Urbayan was taking charge of the fishcorral in view of the physical incapacity of his father Valentin. Marcelo used to go to the cockpit at Hinagotdan during Sundays and play the game thereat.

"The accused Daniel Aboga, Tarcelo Bucatcat and Cornelio Gerces were also enlisted in the same guerrilla organization on 1 October 1942, 11 December 1942, and 1 October 1942, respectively (Exhibits 3, 8 and 9). Daniel Aboga was promoted to third lieutenant (Exhibit 4) and then to second lieutenant (Exhibit 5).

"In cross-examination the defendant Daniel Aboga declared that sometimes in March, 1944, he heard that the head of their guerrilla organization, Pedro Arteche, was captured by the Japanese and brought to Catbalogan. Since then their organization was disbanded and the accused returned to live in their homes at barrio Tagakay. The disbandment of their organization made each one of the members go his own way.

"The prosecution thru its witnesses proved that there existed resentment between the accused and the victims. The resentment was due to the purchase and sale of fish and to gambling. The Urbayans had a fishcorral in that place where they evacuated. Fishcorral was their principal means of livelihood. The accused were frequenters to that fishcorral to buy fish. At times the deceased Marcelo Urbayan stopped the accused from taking fish without paying for it and at others without the exact payment on it.

"Many indulged in this bad practice of taking the neighbor's property and pay-at-will during the enemy occupation that the stench of it reached the four corners of the country. Usually the victims were those strangers in the place, evacuees who ran with their families believing that away from the Japanese they would suffer less privation and insults.

"Sometimes about the 15th of January, 1944, the deceased and the accused had a very hot altercation which, if not for the timely intervention of those present, would have ended in fistic blows. That happened in the fishcorral. The cause was that the accused wanted to take the fish at the price not acceptable to the deceased Marcelo Urbayan.

"That there existed bad feelings between the accused and the deceased re the fish business that warmed their blood, was admitted by the defense who twisted the story that the crime committed may have the necessary circumstances to make it fall under the purview of the amnesty proclamation.

"The defense alleged that the root of the trouble was the manifest desire of the deceased to aid the enemy by refusing to sell the

big fish to the guerrilla soldiers because it was intended for the Japanese soldiers.

"This allegation is absurd. The deceased was a member of the same guerrilla organization as that to which the accused were adhered to. He and his family were living in an area under the absolute control of the guerrilla and where protection from the Japanese was nil. He himself had no protection in that place except the belief that he was loyal because he was an officer of the guerrilla and had no contact with the enemy, which belief strengthen his heart. They were but three houses there. Three families without soldiers or men armed to protect them. He was intelligent; and he had not lose his sense to know that any collaboration, even the most apparent, with the enemy would endanger his life, those of his wife and infant children, and his paralytic father and aged mother. Hence he avoided the enemy. He avoided contact with him. Reason for his living in that secluded place long before the enemy was expected to land and occupy Leyte and Samar until the day of the incident.

"The defense attributed to the deceased collaboration with the enemy; and to heighten the color of that attributed collaboration, it exerted efforts to imprint in the imagination of the court that both deceased, including the aged, paralytic and deaf Valentin Urbayan, *guided* Japanese patrols. The defense wanted the court to believe that the deceased heavily collaborated with the enemy by guiding patrols; but admitted that they continued to live, alone and unprotected, in an area under the control and influence of the guerrilleros.

"There was an implied admittance of the defense, because the prosecution proved without being refuted, that Valentin Urbayan was a paralytic old man of 65 years old who could hardly walk even with the aid of a cane, and deaf. This was testified to by Carmelita Jazmines Urbayan, Eugenio Urbayan and Matea Lim Urbayan. To attribute to him accompanying Japanese soldiers in their patrol is not only incredible but absurd. Such a patrol desired speed; and speed could not be attained by bringing along a man who, if not carried, was to be dragged. Marcelo Urbayan did not buy foodstuff at Tagakay for the Japanese. Loloy Urbayan never went to Libtong. There was no motor-boat that ever reached Libtong. The water along the shore of Libtong is not navigable for any motor-boat because it is very shallow. Neither Marcelo Urbayan nor Valentin Urbayan ever guided a patrol of Japanese soldiers. Neither of them had any connection with the enemy.

"If the deceased did not aid the enemy, what motivated the defense to attribute to them such nefarious behavior? Their knowledge that there exists the amnesty proclamation that shall forthwith release or discharge them 'if the act committed was against persons aiding in the war efforts of the enemy.'

"If it were true that the deceased aided the enemy and guided Japanese patrols in January, 1944, why were not the deceased disturbed but on 17 May 1944, or after the elapsed of four months? They met often. After the time alleged that the deceased guided the patrol, the accused had had various personal transactions with the deceased. The deceased were without any protection during all that period. But the accused, fanned by the presence of thirteen armed malefactors who they alleged came from Leyte, took reins to satisfy their ire towards the deceased; and together or with their help put into execution their evil intention.

"The three accused told incredible stories about the deceased collaborating with the enemy, and more incredible still were those of their witnesses, believing that they could make the court the instrument in declaring that they 'should not be regarded as crim-

inals but rather as patriots and heroes who have rendered invaluable services to the nation' by making their criminal acts fall under the purview of the amnesty proclamation.

"The court is convinced that there existed a bad blood between the accused at bar and the deceased due to personal resentment which arose from purely personal transactions. This motivated the commission of the crime."

The burden is on the accused to prove that his acts were dictated by political considerations. Some courts have held that the accused is required to establish all affirmative defenses to the extent of establishing a reasonable doubt as to his guilt of the crime charged; and that where the accused enters a plea of confession and avoidance, or independent defense, the degree of proof required of him is to establish the matters relied on as a defense to the satisfaction of the court or jury. (20 C. J. S., 197.) In the present case the appellant has not so much as demonstrated his defense by probable evidence.

Judgment reversed; appellant released.

[No. L–1656. January 7, 1949]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* ROMAN VILO, defendant and appellant

1. CRIMINAL LAW; TREASON; MURDER AS AN ELEMENT AND CANNOT BE THE SUBJECT OF A SEPARATE PUNISHMENT.—The killing of A. S. and one S is charged as an element of treason, and it therefore "becomes identified with the latter crime and cannot be the subject of a separate punishment, or used in combination with treason to increase the penalty as article 48 of the Revised Penal Code provides."
2. ID.; ID.; DEATH PENALTY; VOTE NECESSARY FOR IMPOSITION OF.—Under the Judiciary Act of 1948 (No. 296), the death penalty is imposable as long as there are eight Justices voting therefor.
3. ID.; ID.; ID.; ID.; RETROACTIVE EFFECT OF JUDICIARY ACT OF 1948, NO. 296.—The Judiciary Act of 1948 (No. 296), providing in section 9 that "whenever the judgment of the lower court imposes the death penalty, the case shall be determined by eight Justices of the Court," and that "when eight Justices fail to reach a decision as herein provided, the penalty next lower in degree than the death penalty shall be imposed," may be given retroactive effect.

APPEAL from a judgment of the People's Court.

The facts are stated in the opinion of the court.

Felix D. Agcaoili for appellant.

Assistant Solicitor General Manuel P. Barcelona and *Solicitor Martiniano P. Vivo* for appellee.

PARÁS, *J.:*

This is an appeal from a judgment of the People's Court convicting the appellant, Roman Vilo, of the complex crime

of treason with murder and imposing upon him the death penalty and a fine of ₱10,000 with costs.

Appellant's attorney *de oficio* admits that the People's Court correctly found the appellant guilty of the following overt acts: (1) The apprehension and torture on April 15, 1944, in Carcar, Cebu, of Amando Satorre, Ireneo Hedel, Maximo Satorre and Eusebio Rezada, and the killing of Amando Satorre, all due to their connection with the resistance movement. (2) The apprehension on April 15, 1944, in Carcar, Cebu, of Laureano Raponoya, suspected guerrilla member, and his delivery to the Japanese who tortured him. (3) The apprehension, torture and killing of one Segundo in March, 1944, in Pinamungahan, Cebu, because the latter was a guerrilla volunteer guard. And the only plea involved in behalf of the appellant is that he acted under duress.

In support of this plea, it is alleged that on March 25, 1942, the appellant was inducted into the USAFFE organization; that after four months he was arrested, with forty-two others, by the Japanese who tortured them, as a result of which the appellant was hospitalized for two months; that he was thereafter made to join the puppet Philippine Constabulary, with station at different places in the Province of Cebu. Even if these allegations are true, they are not sufficient to show that, when the appellant committed the acts imputed to him, he was acting under any apparent threat of harm from the Japanese, much less from any Filipino superiors. That the appellant had previously been arrested or made to join the Constabulary, did not amount to an order to or threat upon him, leaving him without any choice other than to perform the specific acts of which he was convicted, especially when it is remembered that said acts took place about two years after appellant's alleged torture by the Japanese. Moreover, the way the appellant killed his victims—by bayoneting them and by further slashing the knees of one so as to make the latter's body fit into his grave,—is rather inconsistent with the attitude of one who might have acted reluctantly and under compulsion.

Upon the other hand, it is admitted in the brief for the prosecution that the count regarding the arrest and torture of Laureano Raponoya has not been proved by the necessary two witnesses. Even so, the other two counts warrant appellant's conviction. Adherence to the enemy is of course deducible from appellant's overt acts, particularly from the circumstances that all those apprehended, tortured and killed were members of or suspected of having connection with the guerrilla movement.

The People's Court, however, erred in classifying the crime as treason with murder. The killing of Amando Satorre and one Segundo is charged as an element of

treason, and it therefore "becomes identified with the latter crime and cannot be the subject of a separate punishment, or used in combination with treason to increase the penalty as article 48 of the Revised Penal Code provides." (People *vs.* Prieto, L–399, 45 Off. Gaz., 3329. *See, also* People *vs.* Labra, L–886, 46 Off. Gaz. [Supp. to No. 1], 159. This notwithstanding, the death penalty is still imposable upon the appellant in view of the presence of two proven aggravating circumstances, namely, armed band and the use of torture and other atrocities on the victims, instead of the usual and less painful method of execution; but on the ground presently to be stated, said penalty necessarily has to be lowered to *reclusión perpetua.*

Eight Justices, including the writer of this opinion, believe that the appellant merits the death penalty, but one Justice disagrees. Under article 47 of the Revised Penal Code, which provides that the death penalty shall not be imposed when all the Justices are not unanimous in their voting as to the propriety of the imposition of the death penalty, the penalty of death cannot be imposed upon the appellant. The Judiciary Act of 1948 (No. 296), approved on June 17, 1948, however, provides that "whenever the judgment of the lower court imposes the death penalty, the case shall be determined by eight Justices of the Court," and that, "when eight Justices fail to reach a decision as herein provided, the penalty next lower in degree than the death penalty shall be imposed" (section 9), with the result that under this legal provision the death penalty is imposable as long as there are eight Justices voting therefor. The majority of this Court are of the opinion that the new law may be given retroactive effect so as to cover the case at bar involving an offense committed prior to the enactment of the Judiciary Act of 1948. They argue that the matter referring to the number of Justices necessary for the imposition of the death penalty is merely one of procedure, and that unanimity was previously required in view merely of the small composition of this Court,—a reason that has ceased to exist because there are now eleven Justices.

The writer hereof believes, upon the other hand, that the new law should not be given retroactive effect if it is not to be *ex post facto.* After the inclusion of the provisions of article 47 in the Revised Penal Code, no accused could be sentenced to death except when there was unanimity among the Justices as to the propriety of the penalty; and this requisite correspondingly accorded the accused a substantive right. It is plain, and therefore easy to see, that there can be no more substantive legal provision than that which determines the question whether or not an accused will be sentenced to death. The provi-

sion can indeed be likened to that referring to mitigating or aggravating circumstances upon which the proper period of the penalty prescribed by the Revised Penal Code is dependent. In my opinion, article 47 required unanimity in order to give the assurance that, when a death sentence is meted out, there can absolutely be no room for any doubt as to the propriety of the penalty, implied from the absence of any dissent. The following may be cited in support of the theory of the writer of this opinion:

"The crime in question was committed prior to the enforcement of Act No. 1773 of the Philippine Commission, which went into effect on the 11th of October 1907. Although the complaint was filed by the fiscal on the 18th of January, 1908, it is not lawful to attribute retroactive effect to the said Act of the Philippine Commission for the reason that, even though it refers to a matter of procedure, it does not contain any clause making it retroactive in its effects, and furthermore, the provisions thereof if applied now are prejudicial to the accused.

"Hence, in view of the terms of the aforesaid article 433 of the Penal Code, the proceedings instituted by virtue of the complaint filed by the fiscal can not be sustained, as they were brought without the necessary previous complaint of the aggrieved husband, and in violation of the criminal law; therefore, the said proceedings, together with the judgment rendered therein, are decidedly null and void." (U. S. *vs.* Gomez and Coronel, 12 Phil., 279, 282–283.)

To give effect to the view that the Judiciary Act of 1948, should be given only prospective application, the writer hereof is constrained to switch his vote to the imposition of *reclusión perpetua* upon the appellant who otherwise should have deserved the penalty of death.

With the modification that the appellant is sentenced to *reclusión perpetua*, the appealed judgment is affirmed. So ordered with costs.

Pablo, Briones, and *Tuason, JJ.,* concur.

Moran, C. J., Bengzon, and *Montemayor, JJ.,* concur in the result.

PERFECTO, *J.*, concurring and dissenting:

We concur in the findings of fact made, and in the result of the decision penned, by Mr. Justice Parás.

We also agree with his view that the provision in section 9 of Republic Act No. 296 (known as the Judiciary Act of 1948) regarding the required number of votes for the imposition of the death penalty, has no, and can never have, retroactive effect. Otherwise, it would be *ex post facto* and, therefore, violative of one of the express prohibitions of the Constitution.

We dissent, however, from the pronouncement in the decision to the effect that because appellant committed the crime with the aid of an armed band and with torture, two aggravating circumstances should be considered against him. We are of opinion that the two circumstances just

mentioned should not be considered as modifying circumstances but as essential elements of the treason committed by appellant, following the doctrine laid down in our decision in People *vs.* Victoria, L–369. We may take judicial notice of the fact, borne out by almost all the many treason cases we have considered and decided, that those who committed such a crime used to follow the pattern set by the Japanese in their campaign for the brutal suppression of guerrillas and other members of the resistance movement,—and the aid of armed bands and employment of torture are among the characteristic elements of said pattern.

FERIA, *J.*, dissenting:

I dissent from the decision which, in its pertinent part, reads as follows:

"The People's Court, however, erred in classifying the crime as treason with murder. The killing of Amando Satorre and one Segundo is charged as an element of treason, and it therefore 'becomes identified with the latter crime and cannot be the subject of a separate punishment, or used in combination with treason to increase the penalty as article 48 of the Revised Penal Code provides.' (People *vs.* Prieto, L–399, 45 Off. Gaz., 3329. *See, also* People *vs.* Labra, 884, 46 Off. Gaz., [Supp. to No. 1], 159.) This notwithstanding, the death penalty is still imposable upon the appellant in view of the presence of two proven aggravating circumstances, namely, armed band and the use of torture and other atrocities on the victims, instead of the usual and less painful method of execution; but on the ground presently to be stated, said penalty necessarily has to be lowered to *reclusión perpetua.*

"Eight Justices, including the writer of this opinion, believe that the appellant merits the death penalty, but one Justice disagrees. Under article 47 of the Revised Penal Code, which provides that the death penalty shall not be imposed when all the Justices are not unanimous in their voting as to the propriety of the imposition of the death penalty, the penalty of death cannot be imposed upon the appellant. The Judiciary Act of 1948 (No. 296), approved on June 17, 1948, however, provides that 'whenever the judgment of the lower court imposes the death penalty, the case shall be determined by eight Justices of the Court,' and that, 'when eight Justices fail to reach a decision as herein provided, the penalty next lower in degree than the death penalty shall be imposed' (sec. 9), with the result that under this legal provision the death penalty is imposable as long as there are eight Justices voting therefor. The majority of this Court are of the opinion that the new law may be given retroactive effect so as to cover the case at bar involving an offense committed prior to the enactment of the Judiciary Act of 1948. * * *

"The writer hereof believes, upon the other hand, that the new law should not be given retroactive effect if it is not to be *ex post facto.* After the inclusion of the provisions of article 47 in the Revised Penal Code, no accused could be sentenced to death except when there was unanimity among the Justices as to the propriety of the penalty; and this requisite correspondingly accorded the accused a substantive right. * * *

* * * * * * *

"To give effect to the view that the Judiciary Act of 1948, should be given only prospective application, the writer hereof is

constrained to switch his vote to the imposition of *reclusión perpetua* upon the appellant who otherwise should have deserved the penalty of death.

"With the modification that the appellant is sentenced to *reclusión perpetua*, the appealed judgment is affirmed. So ordered with costs."

Before the deliberation of the case at bar, and for the purpose of applying the decision of this Court or the majority thereof to cases coming up to us on appeal or for revision after the approval of the Judiciary Act of 1948 on June 17, 1948, we have discussed and the majority of this Supreme Court has arrived at the conclusion and resolved that section 9 of said Act providing that "whenever the judgment of the lower court imposes the death penalty, the case shall be determined by eight Justices of the Court. When eight Justices fail to reach a decision as herein provided, the penalty next lower in degree than the death penalty shall be imposed," is applicable to criminal cases pending at the time the Judiciary Act was enacted although the crime had been committed prior thereto, because said provision is procedural in character, and the application thereof to crimes committed before the promulgation of said Act would not make the law unconstitutional or *ex post facto,* in accordance with the almost unanimous decision of the courts of last resort in the States of the Union, after the Constitutions of which ours is patterned.

It is well settled that a law is said to be *ex post facto* when it penalizes as a public offense an act which was not at the time of its commission; when it aggravates or makes a crime greater than it was when committed; when it changes the punishment and inflicts a greater one than the law annexed to the offense when committed, and when it alters the rules of evidence, and requires less testimony or evidence than the law required at the time of the commission of the offense, in order to make the conviction more easy: in short, when the law, in relation to the offense and its consequences, alters the situation of a party to his disadvantages. (11 Am. Jur., section 348).

But it is also firmly established that the prohibition as to the passage of *ex post facto* laws has no application to changes which relate exclusively to the remedy or modes of procedure, for a person has no vested right in any particular remedy, and can not insist on the application to the trial of his case of any other than the existing rules of procedure. So a change in the law requiring the jury instead of the court to fix the punishment, as well, one which makes the court instead of the jury judge of the law, and a law that makes changes as to the number of judges who shall preside at the trial and decides the case, is not unconstitutional as being *ex post facto.* (11 Am. Jur., sections 357, 361.)

In the case of Marion *vs.* State, 20 Neb., 233; 29 N. W., 91; 57 Am. Rep., 825, it was held that "under the principle permitting the substitution of one tribunal for another as triers of questions of law, the legislature may repeal provisions existing at the time of the commission of an offense which direct that juries shall be judges of the law as well as of the facts, and may require that all questions of law shall, following such repeal, be tried by the judge." *In re* Com. *vs.* Phelps, 210 Mass., 78; 96 N. C., 346; 37 L. R. A. (N. S.), 567, the Court held that "a statute providing that capital cases may be tried before one judge, instead of two or more as theretofore, is not *ex post facto* as applied to a prior offense, though it leaves matters of discretion for decision by one presiding judge, where prior thereto such matters were decided by two or more judges." And the Supreme Court of the United States in the case of Duncan *vs.* Missouri, 152 U. S., 377; 38 Law. ed., 485; 14 S. Ct., 570, laid down the ruling that "a statute dividing the Supreme Court of a state into divisions, whereby a person convicted can have a review of his conviction by only part of the judges who constituted the appellate court when the crime was committed, is not an *ex post facto* law."

The question involved in the present case is substantially identical to that of a law which, after the commission of an offense, changes the previous one by decreasing the number of judges who shall preside and decide the case, whereby instead of the old law which required several judges to concur in the decision, the new law only requires one or less number of judges to decide and convict the defendant, or of a law which divides the Supreme Court into divisions after the commission of an offense whereby the defendant will have a review of his conviction by only a part of the Justices who constituted the appellate court when the crime was committed.

There is nothing wrong in that the writer of the decision has to state therein that he is one of the Justices who dissented from the opinion of the majority, in a resolution previously adopted by this Court, and his reasons to justify his dissenting opinion; but what is wrong is that, notwithstanding the opinion of this Court or the majority as to applicability of the above quoted provision of section 9 of the Judiciary Act of 1948 to cases like the present, because said provision requires only the concurrence of eight Justices for the imposition of death penalty, and according to the decision, "eight Justices, including the writer of this opinion believe that the appellant merits the death penalty," the writer of the decision "switches his vote for the imposition of *reclusión perpetua* upon the defendant," for the purpose of defeating or thwarting the decision of the majority of this Court, which

everybody, from the humblest citizen to the highest magistrate of the nation, must respect in accordance with the express mandate of the Constitution, alleging as reason for doing so that the death penalty cannot be imposed, because one of the nine Justices dissented, and the new law should not be given a retroactive effect according to his dissenting opinion.

In the history of the Philippine judiciary, particularly of this Supreme Court, there have been cases in which a Justice who had dissented from the opinion of the majority on the resolution of a legal question, had to act in accordance with the opinion of the majority, out of respect to it, in the resolution of subsequent cases reserving or without waiving his own opinion. But there has not been, up to the present, a case in which a single Justice has so insisted as to make his dissenting opinion prevail over the decision of the majority, as to defeat or thwart said decision in the same case.

As one of those who are of the opinion that the provision of section 9 of the new Judiciary Act, which superseded the article 47 of the Revised Penal Code by reducing to eight the number of Justices of this Court as the majority required for the imposition of death penalty, is applicable to offenses committed prior to the approval of said Judiciary Act, I have to dissent from the decision, because to concur even in the result or dispositive part thereof, would be tantamount to concurring with the writer of the decision in the nonapplicability to the present case of the said provisions of section 9 of the new Judiciary Act, for the writer of the decision does not disagree with the other seven Justices in that "the death penalty is still imposable upon the appellant in view of the presence of two proven aggravating circumstances, namely, armed band and the use of torture and other atrocities on the victims, instead of the usual and less painful method of execution; but on the ground presently to be stated, said penalty necessarily has to be lowered to *reclusión perpetua*," that is, although "eight Justices, including the writer of this opinion, believe that the appellant merits the death penalty," as one of the nine Justices disagrees, "under article 47 of the Revised Penal Code which provides that the death penalty shall not be imposed when all the Justices are not unanimous in their voting as to the propriety of the imposition of the death penalty, the penalty of death can not be imposed upon the appellant," and for that reason he "is constrained to switch his vote to the imposition of *reclusión perpetua* upon the appellant who otherwise should have deserved the penalty of death."

Inasmuch as eight Justices, including the writer of the decision, are of the opinion that the death penalty is "im-

posable upon the appellant in view of the presence of two aggravating circumstances" or "believe that the appellant merits the death penalty," under the provisions of section 9 of the Judiciary Act of 1948, as construed finally by this Court by the votes of the majority of its members before the deliberation of the case at bar, the death penalty must be imposed although one of the nine Justices taking part in the consideration and adjudication of the case dissents from the judgment.

The fact that the writer of the decision has dissented from the majority who have held that the above quoted provisions of section 9 of the new Judiciary Act, and not article 47 of the Revised Penal Code, is applicable to cases like the present, does not authorize him to go against or nullify the result of the deliberation and conclusion reached by the eight Justices including him, on the propriety of the imposition of the death penalty upon the appellant. He can do so only if he dissents from the conclusion that the commission of the offense at bar was attended by mitigating and not by any aggravating circumstances, and therefore death penalty can not be imposed.

The dissenting opinion or vote referred or alluded to in article 47 of the Revised Penal Code and section 9 of the Judiciary Act above quoted, is one based on the ground that, according to the offense charged and the evidence as well as the provisions of Chapter IV of the Revised Penal Code on the application of penalties, and in view of the circumstances attending the commission thereof, death penalty can not be imposed upon the defendant or appellant. This Court having already and finally decided, prior to the deliberation of this case, that section 9 of the new Judiciary Act is applicable to pending cases for offenses committed prior to the promulgation thereof, the writer of the decision can not, legally and properly, reiterate in the present case his dissenting opinion on that question already decided by this Court, and much less consider it as or legal factor for lowering to *reclusión perpetua* the death penalty that he himself believes is imposable upon the appellant or the latter deserves, in view of the two aggravating circumstances which attended the commission of the crime of treason of which the appellant is declared guilty. He can not do so because that question is no longer an open but a closed one by virtue of the principle of *stare decisis*, and it cannot be properly raised by a member of this Court, and become involved in the present case, for the purpose of determining the propriety of the imposition of the death penalty upon the appellant. The vote of the writer of the decision for the imposition of *cadena perpetua* should therefore be considered as of no effect to change his opinion that the appellant deserves to death penalty, and that this penalty is imposable upon

the appellant concurring thereby in the opinion of seven other Justices.

Only the vote of the majority of the members of this Court is required to declare that the last paragraph of section 9, Judiciary Act of 1948, is applicable to cases for offenses committed prior to the date said Act became effective, for it is not a case of declaring a law unconstitutional, and said decision must be respected by everybody, specially by members of this Court. To support the theory of the writer of the decision in the present case would be subversive to the conclusiveness of this Court's decisions unless and until it is reconsidered and reversed, for any one of the dissenters, like the writer of the decision, might render said decision worthless and ineffective by invoking his dissenting opinion on the applicability of said section 9 in a clear case in which his vote is necessary for the imposition of the death penalty.

In view of all the foregoing, the death penalty must be considered as imposed upon the appellant, and therefore the judgment of the lower court imposing said penalty must be affirmed, with costs. So ordered.

Judgment modified.

[No. L-1838. January 7, 1949]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* EXEQUIEL LACANLALE, defendant and appellant

1. CRIMINAL LAW; TREASON; ACCUSED'S EXCESSIVE TREASONOUS BEHAVIOR, BARBARISM AND BRUTALITIES AGAINST HIS COUNTRYMEN DO NOT SQUARE WITH HIS PLEA THAT HE WAS WITH THE GUERRILLAS.—The defendant's alleged saving of some of his townmates from arrest and obtaining the release of others are too trivial to counteract the treasonous inferences deduceable from his excesses. His overbearing behavior and barbarism do not square with his professed purpose of fraternizing with the Japanese to elicit secret informations from them. His brutalities only exposed too clearly an all-out, unconcealed loyalty to his masters who must have derived no little comfort and satisfaction from his assistance. He set about his task in a workmanlike fashion and displayed manifest enthusiasm and seeming pride in his diabolical performance. His aggressiveness and impetuosity had earned for him the unsavory sobriquet "Dumog." Persistent and long-continued tortures and killings of guerrillas and guerrilla suspects do not tie up with the plea that he was in secret league with a guerrilla organization. There were patriotic people who feigned collaboration with the invaders as a mask for a great cause, but we heard of no one who had to use as trappings fearful beatings and murders of the very people whose cause he pretended to advance.

2. ID.; ID.; ID.—Defendant's showing for his "lofty" efforts and adventures were agonies and deaths. He cannot get away with these treasonous crimes by the simple expedient of seeking refuge behind lip patriotism in the hours of reckoning.

APPEAL from a judgment of the People's Court.

The facts are stated in the opinion of the court.

Jose S. Sarte for appellant.

Assistant Solicitor General Inocencio Rosal and *Solicitor Lucas Lacson* for appellee.

TUASON, *J.:*

Exequiel Lacanlale was prosecuted in the People's Court, charged with treason on eight counts. The prosecution introduced evidence only on the first four counts, the rest having been abandoned. The trial court pronounced the defendant guilty and sentenced him to *reclusión perpetua* with the accessory penalties and to pay a fine of ₱10,000 and the costs.

The four charges which were pushed through are to the effect that during the Japanese Military occupation, in the Province of Pampanga, the accused served as agent of the Imperial Japanese Forces, and that on or about March 22, 1944, in the municipality of Arayat, Province of Pampanga, he arrested Capt. Jose M. Tinio, Filemon Pascual and Nicolas Dizon for being guerrillas or for guerrilla activities and maltreated the prisoners.

These charges have been substantiated by the testimony of two or more eye-witnesses. Other overt acts of the same character have also been established. Although the latter acts are not averred in the information, they are nonetheless material as proofs of adherence to the enemy and help to rebut the appellant's defense that his collaboration was a sham.

Following are the salient points in the evidence against the appellant:

On March 22, 1944, Japanese troops with the accused, who was carrying a cowhide, picked up at their homes about fifteen residents of Arayat and marched them to the local Japanese headquarters. Jose M. Tinio was one of the persons arrested. Addressing him "You," the accused asked him if he knew Jose Nuguid. When he said he did not, the defendant twice punched him with the hard end of his strap on the stomach. Lacanlale gave the prisoners a lecture and said that the good Lacanlale was dead but the bad Lacanlale was alive. The accused left after the lecture but soon came back, held Escolastico Salak, one of the prisoners, by the hair and knocked Salak's head against the concrete wall. Then he kicked Salak with the toes of his shoes on the stomach. Salak reeled on the floor and, as he was sprawled writhing in pain, the accused stepped on his breast with all his weight. Later, he stepped on Salak's neck and kicked him on the lips. Salak moved to the side of the wall and leaned

against it whimpering and groaning. The accused left but afterward returned and asked Salak if he had enough. Salak did not answer and the accused held Salak's fingers and sarcastically said that they were nice fingers, good for pulling gun triggers. Then the accused told Salak to put his forefinger flat on the floor and knocked it twice with the butt of his .45-caliber pistol, smashing it. From Salak, the accused turned his attention to Captain Tinio and whacked the latter on the head.

Filemon Pascual, another prisoner was hit by the accused with his whip.

Leon Ramirez, also a prisoner, received a strong blow on the chest from Lacanlale.

Nicolas Dizon on being seized from his house greeted Lacanlale with "Good morning, Mr. Lacanlale." Defendant answered, "What good morning," squeezed Dizon's neck, and struck him with his cowhide or a piece of guava wood in the stomach and on the back, knocking him down.

Romeo Espino was "jiu-jitsued" by Lacanlale. Before Espino was brutally tortured by the Japanese the accused asked him if he knew Casto Alejandrino and when he said no, the accused told him that he had better tell the truth or he, the accused, would kill him.

On February 8, 1944, the Japanese with the accused herded about 200 people to the chapel in barrio Lamit. Lacanlale read a list of persons who were wanted. Three of these persons were in the chapel. These three were taken out by Lacanlale and no one knew what happened to them except that their cries were heard. Later, Lacanlale came back to the chapel and picked out eight more people, whom he likewise took outside. Only three of the eleven victims were seen alive after that.

The appellant's brief does not dispute the truth of the foregoing facts but alleges that his collaboration was a mere front used to help the guerrillas. He has made only one assignment of error which is confined to the discussion of his motives.

The accused has not adduced reliable evidence to prove his alleged connection with the underground. His evidence comprises the testimony of two witnesses both of whom are his townmates.

Querubin D. Basilio, then a captain in the United States Army, stated that the defendant was a co-organizer of a guerrilla unit, according to his information. And Marcelino Bustos testified that the accused was a sergeant in the Luzon Guerrilla Forces in 1942; that the said accused was arrested by Japanese in Manila, whereupon he (witness), on instruction of one guerrilla Captain Hernandez, contacted the defendant and told him to remain with the Japanese. He further said that in 1943, after the defendant had been captured, the witness and others would have been caught in a cockpit by Japanese troops

had not the defendant informed them, through the occupation mayor's brother, that the Japanese were coming to search them; and that in 1944 many people suspected as guerrillas were arrested but through the help of Lacanlale were released.

Basilio's testimony is hearsay. And no tangible evidence has been presented to corroborate Bustos'. The defendant's membership in the guerrilla forces, if it had existed, could have been proven in a more substantial manner by the testimony of more trustworthy witnesses possessing a neutral and disinterested background. Assuming Bustos' veracity, his testimony does not preclude the hypothesis that the appellant shifted his allegiance, and with a vengeance. The defendant himself announced to the prisoners that he was no longer the good, loyal Lacanlale they had known.

For the rest, the defendant's alleged saving of some of his townmates from arrest and obtaining the release of others are too trivial to counteract the treasonous inferences deduceable from his excesses. His overbearing behaviour and barbarism do not square with his professed purpose of fraternizing with the Japanese to elicit secret informations from them. His brutalities only exposed too clearly an all-out, unconcealed loyalty to his masters who must have derived no little comfort and satisfaction from his assistance. He set about his task in a workmanlike fashion and displayed manifest enthusiasm and seeming pride in his diabolical performance. His aggressiveness and impetuosity had earned for him the unsavory sobriquet "Dumog." Persistent and long-continued tortures and killings of guerrillas and guerrilla suspects do not tie up with the plea that he was in secret league with a guerrilla organization. There were patriotic people who feigned collaboration with the invaders as a mask for a great cause, but we heard of no one who had to use as trappings fearful beatings and murders of the very people whose cause he pretended to advance.

In fine, the net results of defendant's showing for his "lofty" efforts and adventures were agonies and deaths. He cannot get away with these treasonous crimes by the simple expedient of seeking refuge behind lip patriotism in the hours of reckoning.

We are satisfied beyond reasonable doubt that the appellant is guilty of treason as charged. The judgment appealed from is therefore affirmed with costs against the appellant.

Moran, C. J., Parás, Feria, Pablo, Perfecto and *Bengzon, JJ.,* concur.

I certify that Mr. Justice Briones voted for the affirmance of the judgment.—Moran, *C. J.*

Judgment affirmed.

[No. L–1874. January 7, 1949]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* MELECIO MEJIAS, defendant and appellant

1. CRIMINAL LAW; MURDER; EVIDENCE; APPELLANT'S DENIALS CANNOT OVERCOME THE SINCERE, POSITIVE AND IMPARTIAL FACTS ESTABLISHED BY THE PROSECUTION.—The evidence on record conclusively shows that, as testified to by the witnesses for the prosecution, appellant M. M. stabbed to death S. B., while the latter was giving him his back and busy in the act of spitting. Appellant's denials cannot overcome the sincere, positive and impartial portrayal of the facts made by the three witnesses for the prosecution. The fact that appellant attended the school house dance and sang therein does not belie his having been, in the early evening, in the porch of the house of J. D. to stab S. B. His own witness had not noticed his presence in the school until only at about 11 o'clock on that night.
2. ID.; ID.; ID.; INCREDIBLE DEFENSE.—The three witnesses for the prosecution do not appear to have any relationship with S. B. who, according to appellant, was his friend and from Lakandula. That said witnesses should testify against appellant only because the previous year there had been a fight among young men of Tagana-an and of Opong, is too far-fetched to be considered.
3. ID.; ID.; ID.; BAD MORAL CHARACTER.—The defense offered as documentary evidence, although rejected by the trial court, Exhibit 2, a criminal complaint for robbery against S. B., and Exhibit 3, the latter's confession, for the purpose of showing the deceased's bad moral character. The evidence, instead of helping appellant, would rather corroborate the truth of the "hantak" incident that provoked appellant, because the mud splash spoiled his white pants. B was a person from whom the insolent throwing of the "hantakan" could be expected.

APPEAL from a judgment of the Court of First Instance for Surigao. Enriquez, J.

The facts are stated in the opinion of the court.

Jose Agbulos for appellant.

Assistant Solicitor General Guillermo E. Torres and *Solicitor Esmeraldo Umali* for appellee.

PERFECTO, *J.:*

Appellant, a resident of Tagana-an, went with his wife in the morning of May 25, 1947, to barrio Opong, Placer, to attend the barrio fiesta. They stayed in the house of Catalina Catubigan where they arrived at 7 o'clock in the morning (46–47). At about 3 o'clock in the afternoon, appellant attended a game called "hantak" (23), which is a game for money in which three coins were thrown to a stone with flat top, one foot long and half foot wide.

While the game was going on, Santos Borja, who happened to be tipsy, grabbed the stone, called "hantakan," and threw it in a muddy place where carabaos used to wallow, and it splashed the mud, smearing the white pants of appellant. The game had to stop. Appellant was an-

gered and went away with two companions, to whom he said that Borja will repay for it. The menacing words were overheard by Valeriano Escabal who happened to be near. (23–24). At about 6.30 in the evening, appellant and his two companions went to the house of Felicisimo Astronomo to take "sumsuman," which means taking solid food with tuba. (8). They drank about one *garapon* of tuba. Appellant was wearing a white undershirt and a dark drawer with red stripes on the sides and a hunting knife. (9). Appellant invited Astronomo to join him at the house of Juliana Diaz where dancing was taking place. Astronomo told appellant to go ahead because he had to dress up first, and appellant and his companions went ahead. After dressing up, Astronomo went to the house of Juliana Diaz, where he found appellant in the porch. Minutes later, Santos Borja came from the hall to the porch for the purpose of spitting, and while in the act, appellant came and stabbed him with his hunting knife. (10). Borja was hit at the back of his left clavicle. He was then giving his back to appellant. After having been hit, Borja jumped from the porch and ran away. Appellant also ran away. Astronomo did the same and went direct to his house. Valeriano Escabal saw the incident when coming up to the house of Juliana Diaz and while still on the third step of the stairs. (24). He saw the stabbing and the protagonists ran away. He also ran away and went home, where he narrated the incident to his wife. (25). Pedro Escabal, who was then dancing, upon noticing that someone jumped from the porch and people in the porch went home, also went home. (35).

The next morning, the corpse of Santos Borja was found lying down, face upwards, on the beach at about fifty fathoms away from the house of Juliana Diaz. The people flocked to see it. (36). That same morning, at about 6 o'clock, appellant warned Felicisimo Astronomo, "If you talk or declare what took place the other night I and my other two companions will kill you." (12–13). That same morning appellant went to the house of Valeriano Escabal to warn him also that if he should talk of what he had seen the last night, "I am going to include stabbing you." (26).

Appellant denied having taken part or been present in the "hantak" game at 3 o'clock in the afternoon of May 25, 1947; having taken "sumsuman" with his two companions in the house of Felicisimo Astronomo; having gone to the house of Juliana Diaz, and having stabbed Santos Borja in the porch of said house. (45–46). He said that he left the house of Catalina Catubigan only at about 4 o'clock in the afternoon to have a look at the decoration of the school building where a dance was going to be held. After the lapse of about five minutes, he went to see and attend the procession which started at

5 o'clock. (46). After it ended at 6 o'clock, he went back to the house of Catalina Catubigan to take supper and be ready to attend the dance in the school building, to which he went at 9 o'clock, accompanied by his wife. At about 2 o'clock in the early morning, when the dance was over, he went home with his wife. (48). He danced about seven times and, upon request, sang before the public. (49). The next morning he heard people gossiping outside of the house about somebody having been murdered the previous night, and the dead person was Santos Borja from Lakandula, a friend of his. (50). Valeriano Escabal testified against him because the previous year, during the fiesta of Opong, young men from Tagana-an were challenged to a fight by Valeriano Escabal, and appellant took part with the young men of Tagana-an in a fight against the young men of Opong. Felicisimo Astronomo testified against him because he is from Opong, and so with Pedro Escabal because he is a relative of Valeriano Escabal. (51–52).

Atilano Leyson, appellant's witness, testified that he saw appellant in the school house dance at about 11 o'clock in the night of May 25, 1947, when, upon the request of the sergeant of police, appellant sang a song in English and he was applauded, although there was no encore. (42–43.)

The evidence on record conclusively shows that, as testified to by the witnesses for the prosecution, appellant Melecio Mejias stabbed to death Santos Borja, while the latter was giving him his back and busy in the act of spitting. Appellant's denials cannot overcome the sincere, positive and impartial portrayal of the facts made by the three witnesses for the prosecution. The fact that appellant attended the school house dance and sang therein does not belie his having been, in the early evening, in the porch of the house of Juliana Diaz to stab Santos Borja. His own witness had not noticed his presence in the school until only at about 11 o'clock on that night.

The three witnesses for the prosecution do not appear to have any relationship with Santos Borja who, according to appellant, was his friend and from Lakandula. That said witnesses should testify against appellant only because the previous year there had been a fight among young men of Tagana-an and of Opong, is too far-fetched to be considered.

The defense offered as documentary evidence, although rejected by the trial court, Exhibit 2, a criminal complaint for robbery against Santos Borja, and Exhibit 3, the latter's confession, for the purpose of showing the deceased's bad moral character. The evidence, instead of helping appellant, would rather corroborate the truth of the "hantak" incident that provoked appellant, because the mud splash spoiled his white pants. Borja was a person from whom the insolent throwing of the "hantakan" could be expected.

The trial court correctly found appellant guilty of murder, qualified by treachery, no modifying circumstance attending.

The appealed judgment sentenced appellant to *reclusión perpetua*, with the legal accessories, and to indemnify the heirs of the deceased in the sum of ₱2,000 and to pay the costs. The indemnity must be raised to ₱6,000, pursuant to the doctrine laid down in People *vs.* Amansec, L–927, 45 Off. Gaz. [Supp. to No. 9], 51 and thus modified, the appealed judgment is affirmed.

Moran, C. J., Parás, Feria, Pablo, Bengzon, and *Tuason, JJ.,* concur.

I certify that Mr. Justice Briones and Mr. Justice Montemayor voted for the affirmance of the judgment.—MORAN, *C. J.*

Judgment modified; indemnity increased.

[No. L–2327. January 11, 1949]

CANUTO F. PIMENTEL, protestant and appellant, *vs.* PEDRO FESTEJO, protestee and appellee

1. ELECTIONS; BALLOT; NAME OF CANDIDATE WRITTEN IN WRONG SPACE.—For any ballot to be counted for a candidate for mayor, it is indispensable that his name is written by the voter in the proper space for mayor, which word is clearly printed in the ballot and cannot be mistaken by a person who, as provided by the Constitution, is able to read.

2. ID.; ID.; ID.—A name can be counted for any office only when it is written within the space indicated upon the ballot for the vote for such office (Lucero *vs.* De Guzman, 45 Phil., 852). It is impossible to count a ballot as vote for a candidate for mayor, when his name is clearly written in the space reserved for another office.

3. ID.; ID.; PURPOSE IN PRINTING BALLOTS IN THE FORM SPECIFIED BY THE REVISED ELECTION CODE.—Official ballots are printed in the form specified by sections 124 and 126 of the Revised Election Code for the clear and unmistakable determination of the will of the voters, so as to avoid, as far as possible, disputes among the members of the board of election inspectors that would hamper the early determination of the result of an election. That early determination is demanded by public interest. Delays in the counting of votes increase uncertainty in the public mind, provoke uneasiness, and are a temptation for those bent on thwarting the popular will.

APPEAL from a judgment of the Court of First Instance of Ilocos Sur. Hilario, J.

The facts are stated in the opinion of the court.

Felix V. Vergara, Tomas A. Cortez and *Severino Dagdag* for appellant.

Pedro Singson, Floro Crisologo, Antonio Raquiza, Eloy Bello, and *Lazaro Abigania* for appellee.

PERFECTO, *J.*:

Pedro Festejo was proclaimed elected as mayor of Santa Lucia, Ilocos Sur, in the elections of November 11, 1947, with 1,108 votes against 1,101 votes in favor of Canuto F. Pimentel.

The latter protested. The trial court found that Festejo received 1,107 votes and Pimentel 1,101 votes and, consequently, dismissed the protest.

Appellant appealed, contending that the lower court erred in not crediting to him the fifty nine ballots mentioned in his first three assignments of error as votes in his favor, with which he would appear to have received a total of 1,160 votes and, therefore, enough majority to win the election.

As stated in appellant's brief, his name in the thirty seven ballots mentioned in his first assignment of error "was written on the line corresponding to vice-mayor," in the eight ballots mentioned in his second assignment of error "was written on the line corresponding to the second space for member of the provincial board," and in the fourteen ballots mentioned in his third assignment of error "was written in the space for councilor." Either names of other persons, not candidates for mayor, are written in the space for mayor in said ballots, or said space appears to be in blank.

Appellant's contention is premised on the theory that his name was only misplaced in the ballots in question but the intention of the voters to elect him as mayor can be gathered from the fact that in the order or sequence of the candidates for the several positions mentioned in each ballot, his name would appear to be written in the space for mayor if the names of the candidates for governor, member of provincial board, mayor and councilor have not been also misplaced one or two lines above or below the correct space. Appellant's theory is untenable. It appears on record that the majority of the election inspectors in Santa Lucia belonged to the same political party of appellant and, therefore, had the control in the decisions of the board of inspectors. They did not count the ballots in question in favor of appellant. This shows that said majority inspectors had not found upon the face of the ballots themselves that the voters voted for appellant as mayor. Belonging to the same political party of appellant, they cannot be assumed or expected to have deprived appellant unjustly of any vote.

Said inspectors appear to have applied the law correctly.

The Constitution has reserved the right to exercise suffrage to citizens of legal age who "are able to read and write." (Section 1, Article V.) Section 135 of the Revised Election Code provides that the voter shall fill

his ballot "by writing in the proper space for each office the name of the person for whom * * * he desires to vote."

The last provision is couched in a language the mandatory character of which cannot be questioned. Therefore, for any ballot to be counted for a candidate for mayor, it is indispensable that his name be written by the voter in the proper space for mayor, which word is clearly printed in the ballot and cannot be mistaken by a person who, as provided by the Constitution, is able to read.

A name can be counted for any office only when it is written within the space indicated upon the ballot for the vote for such office (Lucero *vs.* De Guzman, 45 Phil., 852). It is impossible to count a ballot as vote for a candidate for mayor, when his name is clearly written in the space reserved for another office (Aviado *vs.* Talens, 52 Phil., 665; Villaviray *vs.* Alvarez, 61 Phil., 42).

Official ballots are printed in the form specified by sections 124 and 126 of the Revised Election Code for the clear and unmistakable determination of the will of the voters, so as to avoid, as far as possible, disputes among the members of the board of election inspectors that would hamper the early determination of the result of an election. That early determination is demanded by public interest. Delays in the counting of votes increase uncertainty in the public mind, provoke uneasiness, and are a temptation for those bent on thwarting the popular will. On this respect we can still look to the elections in the United States as example and model. Notwithstanding the fact that about 50,000,000 voters had cast their votes in a vast country expanding from ocean to ocean, it took only about eleven hours from the closing of the election, probably the most surprising and spectacular in American history, for the whole world to know that Harry S. Truman has been re-elected President on November 2, 1948.

Considering that in fifty nine ballots claimed by appellant in this appeal his name does not appear written in the space reserved for mayor, he cannot claim them as votes in his favor as candidate for mayor.

There is no need of considering the counter-assignments of error of appellee.

The appealed decision is affirmed, with costs against appellant.

Moran, C. J., Parás, Feria, Pablo, Bengzon, and *Briones, JJ.,* concur.

MONTEMAYOR, *J.,* dissenting:

In the elections held on November 11, 1947, in the municipality of Santa Lucia, Ilocos Sur, the election for the post of Mayor for which the protestant Canuto F. Pimentel and the protestee Pedro Festejo were registered candidates,

was quite close as shown by the fact that the protestee was proclaimed mayor-elect with a plurality of only seven votes, having obtained 1,108 votes as against 1,101 received by Pimentel. This plurality was reduced to six by the trial court acting on the motion of protest filed by Pimentel. On appeal to this Court, the majority decision affirms the judgment of the lower court even without considering the counter-assignment of errors of the appellee. Said appellee claims that he should be credited with a plurality of thirteen votes instead of the six votes found by the trial court. The appellant under his three assignments of errors claims fifty-nine additional votes. It is therefore evident that if a majority or even a fraction, say, one-half or even one-third of the 59 votes claimed by him but rejected by the trial court are found to be valid votes and so counted in his favor, the appeal must be decided in his favor and he should be declared elected Mayor of Santa Lucia, Ilocos Sur.

The main if not the only point in issue involved in this appeal is the fact, and its legal effect, that in the 59 ballots above referred to, the name of the appellant Canuto F. Pimentel does not appear on the line for the post of mayor. It is either above said line, that is to say, it is written on the line corresponding to the post of members of the provincial board, like in ballot Exhibit J–5 or on the majority of said ballots it is found below the line of the office of mayor, that is to say, on the line for the post of vice-mayor, like in Ehibit F–1. On this fact alone, and without considering the whole ballot, as well as the circumstances surrounding the elections, this Court through the majority decision rejected these 59 ballots on the ground that the voters who prepared them failed to comply with the law which requires and directs that "the voter shall fill his ballot by writing in the proper space for each office the name of the person for whom * * * he desires to vote."

I believe that this is too narrow and strict a construction and application of the election law and would result in depriving a great number of qualified voters in participating in the choice of their elective officials. Such construction and interpretation runs counter to the spirit of the law itself as well as the intention of the Legislature that promulgated it, as repeatedly interpreted by the courts. Let us consider some of these ballots involved which may be regarded as typical of the rest. But before we do so, it is important to know the persons who ran under the banner of the Liberal Party to which the protestant belonged, as well as the offices for which said persons were candidates, from provincial governor down to municipal councilor. It is also a fact, as pointed out by counsel for appellant that the latter, on and before the elections, was known as a candidate for the position of mayor, only, having campaigned as such and filed his certificate of candidacy for said office, and that considering the relatively

small voting population in Santa Lucia, the electorate, particularly his followers in the Liberal Party knew that he was a candidate for mayor, only. In addition, in said elections of November 11, 1947, there was in Santa Lucia, no candidate for national, provincial or municipal office with the same name or surname of the protestant Canuto Pimentel, thereby precluding any possible mistake or confusion about the identity of the person referred to whenever mentioned in any ballot with the name Pimentel. The following were the candidates for the Liberal Party:

Provincial Governor	Perfecto Faypon
Members of the Provincial Board	Pablo C. Sanidad Cecilio A. Balbin
Municipal Mayor	Canuto F. Pimentel Martin Angala
Vice-Mayor	Eliseo Abaya
Municipal Councilors	Valentin Hadloc Leoncio Fabro Cesario Libed Antero Hermosura Alfonso Gracia Rufino Haber

Now, let us examine the first ballot (Exhibit F–1) under the first assignment of error, which for purposes of reference we reproduce below:

OFFICIAL BALLOT
Balota Opisyal

SANTA LUCIA, ILOCOS SUR, NOVEMBER 11, 1947
Santa Lucia, Ilocos Sur. Novyembre 11, 1947

Fill out this ballot secretly inside the booth. Do not put any any distinctive mark in any part of this ballot.

Sulatan nang palihim ang balotang ito sa loob ng silid na botohan. Huwag lagyan ng anumang palatandaan ang alinmang panig ng balotang ito.

Provincial Governor
Punong Lalawigan

MEMBERS OF THE PROVINCIAL BOARD:
Mga Kagawad ng Lupong Lalawigan:

1. P. Faypon
2. P. Sanidad

MAYOR C. Balbin
Alkalde

VICE-MAYOR C. Pimentel
Pangalawang Alkalde

COUNCILORS
Mga Konsehal

1. E. Abaya
2. V. Hadloc
3. A. Hermosora
4. L. Fabros
5. C. Libed
6. A. Gracia

R. HABIR

It is obvious that the voter who prepared this exhibit overlooked the first line corresponding to the post of Governor and began writing down the names of his candidates on the first line for the post of Member of the Provincial Board. It is equally evident that he voted a straight Liberal Party ticket, for a complete set of Liberal Party candidates, even and including the posts for six (6) councilors, so that the name of his last candidate—R. Habir, who was the official Liberal Party candidate,—Rufino Haber, had to be written on the blank space below the last and 6th line for the post of councilor. Of course, if we are to confine ourselves only and exclusively to the line for the post of Mayor, as did those of the majority, then as far as protestant is concerned, the ballot is to be rejected because his name is not on that line. But, if we are to ascertain the intention of the voter who prepared this Exhibit F–1, as shown by the entire ballot and the circumstances surrounding the case, there is not the least doubt to my mind that the voter intended to vote for Pimentel for the post of Mayor. Evidently, the voter copied, without a break, the names of his candidates appearing on an official list kept in each booth, or his own private list or copy of a sample ballot previously filled out, which list a voter generally takes along with him for his guidance, especially when there are many posts to be voted for, including those for councilors; but in doing so he made a slight mistake by overlooking the first line, thus resulting in the transposition or misplacement of all the names of the candidates by one line; but the order and sequence of the names of his candidates is unbroken and complete. This mistake is natural and not difficult to make, and was committed by many other voters—those who prepared the great majority of the 59 ballots herein involved. It is due in part to the unfamiliarity and lack of understanding by the voters, of the ballot itself. To the ordinary Ilocano voter the phrase Provincial Governor may not have a clear meaning. He is more familiar with the word *Gobernador* as designating the chief provincial executive. And the Tagalog phrase Punong Lalawigan is unknown to him. So it was not strange and unnatural for him to omit and disregard that line for Governor, and start writing on the line for members of the provincial board, specially since the numbering—1, 2, etc. begins on that line.

Examining a few of the 59 ballots, which, like Exhibit F–1, may be regarded as typical of the majority of the rest, we find that Exhibit F–2 is exactly the same as Exhibit F–1 except that the name of E. Abaya instead of being written on the first line for the post of councilor as was done in Exhibit F–1, is written opposite the printed word "councilors" and that the voter wrote out the names of only five (5) councilors (all of the party of Pimentel)

in fact the same names of councilors appearing on Exhibit F–1 instead of six (6), but the order and sequence of the names of his candidates is unbroken and complete. Exhibit F–4 is the same as Exhibit F–1 except that only five councilors were voted for. Exhibit J–3 is exactly the same as Exhibit F–2, except that the voter added one more councilor to the same names of five councilors contained in Exhibit F–2. Exhibits U–1 and U–4 are exactly the same as Exhibit F–1. Exhibits K, K–1, K–2 and K–4 are exactly the same as Exhibit F–1. Exhibits K–3 and K–5 are exactly the same as Exhibit F–2.

As above stated, the ballots above-mentioned are typical of the rest. The question to be determined therefore is whether or not these fifty-nine ballots or a majority of them are to be accepted and counted as good ballots, clearly and unmistakably, in my opinion, expressing as they do the intention of the voters to vote for the appellant for the post of Mayor. The trial court and counsel for the appellee invoke the doctrines laid down in the cases of Lucero *vs.* De Guzman, 45 Phil., 852 and Aviado *vs.* Talens, 52 Phil., 665, to the effect that unless the name of a candidate is written on the space corresponding to the office for which he is a candidate, it cannot be counted for him. This strict and narrow construction of the Election Law has, fortunately, been relaxed and modified in the later cases of Adeser *vs.* Tago, 52 Phil., 856; Mandac *vs.* Samonte, 54 Phil., 706; and Coscolluela *vs.* Gaston, 63 Phil., 41, wherein this tribunal refusing to be bound by what appears on the space corresponding to a post in the ballot, considered the ballot as a whole, in its endeavor to ascertain the intention of the voter and to give him a chance to show and voice his choice of the men who are to govern his town, province and country. This, in my opinion is the right attitude and mission of the courts as regards elections.

In the case of Siagan *vs.* Benesa, 40 Off. Gaz., No. 25, page 4767, the Court of Appeals held and said:

"The name of the candidate for mayor was written on the line corresponding to vice-mayor, but the order of the names of the candidates beginning with that of Governor down thru the two positions for member of the Provincial Board has been preserved. *Held:* It is evident that the voter *intended* to vote for said candidate as mayor but he, apparently *overlooked the first line for Governor* and proceeded to write the names of his candidates beginning with the first line corresponding to that of member of the Provincial Board. The ballot is valid."

True, said decision rendered by a court inferior to the Supreme Court, is not binding on this Tribunal, but it is a unanimous decision signed by four Justices, and merits consideration.

In the case of Mandac *vs.* Samonte, *supra,* the Supreme Court said the following:

"In ballot 46–*a*, the surname '*Samonti*' is some distance from the name 'Domingo'; but it is evident that this is simply due to the fact that the voter did not notice the line where he wrote the surname. We hold this ballot to be valid.

"The same holds good for Exhibit 50, where the contestee's name is written above the line for governor, and nearer that for representative. But a careful examination of said ballot reveals the fact that the person who filled it out could not follow the respective lines. Even the name 'Santiago' for senator is written across different lines. That the *voter's intention* to vote for the contestee as governor is shown by the fact that all the names for the several offices are written in; for senator Santiago Fonacier, for representative Eriño Ranjo for governor Domingo Samot (in sound like Samonte) and for the provincial board Mauro Quevedo and Antonio Galo."

In the case of Coscolluela *vs.* Gaston, *supra,* the Supreme Court made the following findings and conclusion:

"* * * We find after a detailed examination that in ballots Exhibits 83 and 407, the voters who prepared them, instead of writing the names of their candidates in the spaces corresponding to the offices for which they wanted to vote for them, wrote them on the column for the votes for the councilors, but placing before said names the offices for which they voted. For instance, in the case of the protestant, they put before his name the word 'gobernador' or 'provincial coverno'. In these two ballots, while the name and surname of the protestant are not written in the proper place, it is evident from the placing of the office before said names that *the intention* of those who prepared said ballots was to vote for the protestant. Consequently, the two ballots should be admitted as valid in his favor. * * *

"* * * An examination of the ballot shows that the full name Emilio Gaston was written, but the surname Gaston was placed a little lower than the line corresponding to the vote for the candidate for governor. The name of the candidate voted for representative having been written in the same way, we believe that the voter, who must be an illiterate, *intended* to write the full name on the line reserved for the purpose, but the surname was written a little lower than the said line.

"The other three ballots were likewise correctly admitted by the lower court, because while the names of the candidates in said ballots were written rather outside of the corresponding line, this was due to the lack of expertness of the voters who prepared them.

"4. Ballot Gaston Exhibit 638. This ballot shows upon its face that the names of the candidates voted for representative and governor were written upon the *line immediately above* that on which they should be written respectively. *Considering, however, all the other details* appearing thereon, it is patent that *the intention* of the voter who prepared it was to vote for the protestee for the office of governor.

"5. Ballot Gaston Exhibit 3483. While the protestee's name does not appear written exactly on the line reserved for the vote in favor of the candidate for governor, *considering all the other circumstances* and details appearing therein, no one can doubt in the least the voter's intention to vote for the protestee as governor."

On the question of liberally interpreting the election law for the purpose of ascertaining and giving due course to the intention of the voter, the following citations may be referred to with profit. In the case of Perez *vs.* Suller, 40 Off. Gaz., Third Supp., 226, this Court reiterated its holding in the case of Moya *vs.* Del Fierro (G. R. No. 46863) in the following language:

"Republicanism, in so far as it implies the adoption of a representative type of government, necessarily points to the enfranchised citizen as a particle of popular sovereignty and as the ultimate source of the established authority. He has a *voice* in his Government and whenever possible it is the solemn duty of the judiciary, when called upon to act in justiciable cases, to give it efficacy and not to stifle or frustrate it. This, fundamentally, is the reason for the rule that ballots should be read and appreciated, if not with utmost, with reasonable, liberality."

The following citation is also in point:

"A ballot is indicative of the *will* of the voter. It is not required that it should be nicely or accurately written, or that the name of the candidate voted for should be correctly spelled. It should be read in the light of all *the circumstances surrounding the election and voter*, and the object should be to ascertain and carry into effect the *intention* of the voter, if it can be determined with reasonable certainty. The ballot should be *liberally* construed, and the intendments should be in favor of a reading and construction which will render the ballot effective, rather than in favor of a conclusion which will, on some technical grounds, render it ineffective." (Mandac *vs.* Samonte, 49 Phil., 284, 301.)

In the case of Prenevost *vs.* Delorme, 129 Minn., 359, 152 N. W., 758, cited in Cooley's Constitutional Limitations, 8th Edition, Vol. 2, p. 1380, it was held that:

"In deciding for whom the voter intended to cast his ballot, the court is justified in *examining the ballot itself*, not only that part of it relating to the contestant or contestee, but the entire ballot, and, if from an examination of the entire ballot, the *intention* of the voter may be clearly ascertained, then the ballot should be counted for the person for whom the voter clearly intended to vote." (The underlining in all these citations is ours.)

In considering the ballots involved in this appeal and in strictly interpreting the election law the trial court and, I am afraid, this Court looked only and exclusively at the space and line corresponding to the post of mayor, and not finding the name of the protestant thereon, refused to count them in his favor. It did not, apparently, extend its field of inspection and scrutiny to the rest of the ballot and consider the circumstances surrounding this case in an endeavor to ascertain and give due course to the intention of the voter who, after all, is the person for whose benefit the election law was prepared and promulgated and around whom the whole system of suffrage revolves. It must be borne in mind that the ballot is not and was never intended to be a literacy or intelligence test. Neither is

it an end in itself. It is only a means by which the voter expresses his choice and desire, as his participation in popular Government. If his intention can be ascertained and known in any reasonable way whatsoever by an examination of his ballot, and the voter is found to have achieved a substantial compliance with the law, and not seriously violated it, bearing in mind his lack of education, experience and training, said intention should be respected and carried out. True, the law requires that the voter know how to read and write but oftentimes his literacy extends only to writing his own name and to copy others, and in a clumsy and laborious manner at that, and to reading with great difficulty. As a rule, the voter out in the barrios has no intimate acquaintance or association with pencil, pen and paper except on the day of the elections which comes seldom, by the years and not by the months. So his accomplishments or shortcomings in filling out his ballot should be judged and considered with understanding and liberality. Unlike the preparation of a will where the law requires strict compliance therewith because the testator counts with the aid and advice and assistance of relatives, friends, and lawyers in preparing his will, and hours, days or even weeks may be used, the elector or voter usually unfamiliar with the ballot, especially with its preparation, is sent to the voting booth, alone, *in comunicado,* and thrown entirely upon his own resources, and once in there, he is on his own; and he cannot take all day to prepare his ballot, either (he is allowed only five minutes by the law, see section 135, Revised Election Code) because there is a long line of electors waiting for him to finish filling out his ballot and vacate the booth. Should we therefore wonder or blame him if in his hurry and excitement or ignorance, he omits, or overlooks a line and slightly misplaces his complete set of candidates on the ballot? Even men more educated, more intelligent and with more experience not infrequently make mistakes in writing out names, even their own names on the proper spaces or lines. How many times have parties to a contract deed or document committed such a mistake despite the help or indication of the notary public or person preparing the document, and signed their names in the wrong space or line as for instance, writing the name and signature of the vendor in that provided for the vendee or witnesses.

As an additional argument in support of its stand in rejecting the fifty-nine ballots, involved in the appeal, the majority opinion refers to and cites the fact that the very inspectors of the appellant did not count said votes for him. While this fact might speak well of the impartiality and honesty of said inspectors, I hardly think it has any relation or relevancy to the merit of said ballots. It should

be borne in mind that poll inspectors, are expected and required only to read the ballots, particularly the names on the lines corresponding to each post, and count them. They are not supposed to interpret the election law and pass upon its fine points. That delicate task is reserved to the courts, especially to this Tribunal. So what the inspectors did in rejecting these ballots, is in my opinion, of no import in the consideration of the merits of this appeal.

In conclusion, I believe that a great majority of the fifty-nine ballots claimed by the appellant, at least one-half of them which would be more than enough to outnumber and overcome the plurality of thirteen ballots claimed by the appellee, should be counted for and credited to the former, and that he (the protestant) should be declared elected to the post of Mayor of Santa Lucia, Ilocos Sur.

TUASON, *J.:*

I agree with this dissent.

Judgment affirmed.

[No. L-1607. January 12, 1949]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* ATANACIO FIGUEROA, defendant and appellant

1. CRIMINAL LAW; MURDER; EVIDENCE; MOTIVE.—The question of motive is always relative, and no fixed norm of conduct can be said to be decisive of every imaginable case.
2. ID.; ID.; CONCLUSIVENESS OF THE FINDINGS OF FACT OF THE COURT "A QUO."—There exists no sufficient reason for not believing in the evidence for the prosecution and for reversing the findings of the trial judge who had the benefit of hearing and observing the demeanor of the witnesses for both sides. Indeed, the fact remains that said witnesses were not shown to have had any reason for falsely incriminating the appellant.
3. ID.; ID.; EVIDENCE; PRESUMPTION OF CONTINUITY.—The presumption as provided for by section 69 of Rule 123 of the Rules of Court is merely disputable, and in this case that presumption cannot prevail over the positive testimony of two witnesses.
4. ID.; ID.; ID.; ALIBI AS A DEFENSE.—The defense of alibi is likewise necessarily disposed of adversely to appellant who has not proved that it was physically impossible for him to be at the place of the crime which was not far from the house of his father.

APPEAL from a judgment of the Court of First Instance of Samar. Fernandez, J.

The facts are stated in the opinion of the court.

Feliciano M. Pamintuan for appellant.

Assistant Solicitor General Guillermo E. Torres for appellee.

PARÁS, *J.*:

This is an appeal from a judgment of the Court of First Instance of Samar, finding the appellant, Atanacio Figueroa, guilty of murder and sentencing him to *reclusión perpetua,* with civil interdiction for life and perpetual absolute disqualification, to indemnify the heirs of Felicisimo Abellar in the sum of ₱2,000, and to pay the costs.

The theory of the prosecution is to the following effect: In the evening of May 25, 1945, a dance was held in Calbiga, Samar, in the house of the municipal mayor, Luciano Ty. Among those present in the affair were Felicisimo Abellar, Jose Daradal, Tirso Ocenar, Doroteo Labro, Baldomero Daradal, Vicente Abellar, and the appellant, Atanacio Figueroa. Shortly after these had left the house of Mayor Ty, at one o'clock of the following morning, May 26, 1945, Baldomero Daradal and Doroteo Labro quarreled about a certain girl who also attended the dance. As Baldomero even tried to box Doroteo, Felicisimo Abellar intervened by asking them not to fight over a trifle. Whereupon Antonio Figueroa remarked, "Why, who are you? Leave them alone." The appellant followed with the comment, "That is always the trouble with you. You intervene. Wait and you will see." Nothing, however, happened and the group merely dispersed.

No sooner had Jose Daradal and Baldomero Daradal, on their way home, seen Felicisimo Abellar and Tirso Ocenar, than Jose Daradal observed the appellant draw a weapon with which he stabbed Felicisimo Abellar on the leg as the latter had his back towards the appellant. Felicisimo turned around and thereafter accused the appellant in this wise, "Tanting, why did you wound me?" Jose Daradal wanted to help Felicisimo, but he was prevented by Rafael Figueroa (brother of appellant) who pointed his pistol at Jose with the warning, "You also?"

Returning to his house, Felicisimo Abellar was asked by his wife, Adela Figueroa, as to who wounded him, to which Felicisimo answered that it was the appellant. Vicente Abellar, who was informed by Honorio Abellar of the occurrence, rushed to Felicisimo's house and there inquired about the identity of the assailant, whereupon Felicisimo revealed that it was the appellant. Notwithstanding the medical aid given by Dr. Sixto Gaborni, who was summoned by Adela Figueroa, Felicisimo Abellar died at about four o'clock in the same morning as a result of severe hemorrhage produced by the leg wound inflicted by the appellant, but not without saying to his brother Vicente Abellar, "Good-bye, I am going to die."

The appellant set up the defense of alibi, in that, on the night in question, he did not attend the dance in Mayor Ty's residence as he was in his father's house, watching the game of *monte* then being played therein and collecting

the house fee commonly called "arriba"; that during the progress of the game, hearing a noise outside, he looked out of the window and saw Felicisimo Abellar wounded, notwithstanding which, however, he ramained in the house; that the game lasted until morning after which he slept, waking up only about noon.

Appellant's brief is lengthy and evidences the zeal and industry with which his attorney has handled the case on appeal. The first point stressed in appellant's behalf is that the intervention of the deceased Felicisimo Abellar in the quarrel between Baldomero Daradal and Doroteo Labro could not have been presented by the appellant to such a degree as to have driven the latter to the commission of the heinous crime of murder. In our view of the case, namely, that the theory of the prosecution is supported by the proof and that, accordingly, appellant's identity as the author of the fatal assault against Felicisimo Abellar has been satisfactorily established, the alleged insufficiency of motive becomes unimportant. Not only was the appellant seen *in fraganti* by prosecution witness Jose Daradal, but his identity was revealed by Felicisimo to Adela Figueroa and Vicente Abellar before he died. Moreover, the question of motive is always relative, and no fixed norm of conduct can be said to be decisive of every imaginable case.

To discredit the principal witnesses for the prosecution, attention is directed to their relationship to the deceased: Jose Daradal, Adela Figueroa and Vicente Abellar are respectively the nephew, wife, and brother of Felicisimo Abellar. We have examined their testimony carefully, in the light of the various criticisms contained in appellant's brief, and we have found no sufficient reason for not believing them and for reversing the findings of the trial judge who had the benefit of hearing and observing the demeanor of the witnesses for both sides. Indeed, the fact remains that said witnesses were not shown to have had any reason for falsely incriminating the appellant.

There can be no doubt as to the presence of Vicente Abellar in the house of Felicisimo after the latter had returned already wounded, since Dr. Sixto Gaborni, admittedly a disinterested witness, when asked on cross-examination as to whether he remembered having seen Vicente Abellar, answered, "I saw him around the house." But it is vehemently insisted for the defense that Vicente Abellar lied when he testified that Felicisimo Abellar was able to name his assailant before he died because Dr. Gaborni observed that Felicisimo was unconscious when said doctor arrived for the first time at Felicisimo's house and when he returned for the second time not long after the first visit. Appellant's counsel invokes the presumption that "a thing once proved to exist continues as long as is usual with

things of that nature." (Rules of Court 123, section 69, par. [*dd*].) It is noteworthy, however, that Dr. Gaborni came to the house much later than the arrival of Felicisimo therein, and the revelation not only to Vicente Abellar but to Adela Figueroa was undoubtedly made before Felicisimo became unconscious. At any rate, the presumption relied upon is merely disputable, and in this case that presumption cannot prevail over the positive testimony of two witnesses.

In view of what has been said, it is unnecessary for us to inquire into the admissibility of Exhibits 3 and 3–1 to 3–4 which were rejected by the trial court, or to comment on the failure of the appellant and his family to attend the funeral of Felicisimo. The defense of alibi is likewise necessarily disposed of adversely to appellant who has not proved that it was physically impossible for him to be at the place of the crime which was not far from the house of his father.

The appellant was correctly found guilty by the trial court of the crime of murder. But as suggested in the brief for the Government, the aggravating circumstance of nocturnity is absorbed in treachery, and the appellant is entitled to the mitigating circumstance of lack of intention to commit so grave a wrong as that committed, as the wound inflicted was merely on the leg.

It being understood that the appellant is sentenced to an indeterminate penalty of from 10 years and 1 day, *prisión mayor*, to 17 years, 4 months and 1 day, *reclusión temporal*, the appealed judgment is affirmed.

So ordered, with costs.

Moran, C. J., Feria, Pablo, Bengzon, Briones, Tuason, and *Montemayor, JJ.*, concur.

PERFECTO, *J.:*

We concur except that the indemnity should be raised to ₱6,000 in accordance with the doctrine laid down in People *vs.* Amansec, L–927.

Judgment modified.

[Nos. L–1846–48. January 18, 1949]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* PEDRO REYES (*alias* BASIBAS) ET AL., defendants. VICENTE GATCHALIAN (*alias* MAGALLANES) and SEVERINO AUSTRIA (*alias* BIG BOY), appellants.

CRIMINAL LAW; MURDER AND SERIOUS PHYSICAL INJURIES; EVIDENCE; ACCUSED'S ADMISSION.—The conversation had among the accused immediately after the shooting, which was overheard in the rice field by the prosecuting witness is admissible as an admission and as part of the *res gestæ*.

APPEAL from a judgment of the Court of First Instance of Pampanga. Lucero, J.

The facts are stated in the opinion of the court.

Artemio C. Macalino for appellants.
First Assistant Solicitor General Roberto A. Gianzon and *Solicitor Jaime de los Angeles* for appellee.

BENGZON, *J.:*

This is an appeal from a judgment of the Court of First Instance of Pampanga sentencing herein appellants to *reclusión perpetua* and indemnity for the murders of Benjamin Nery and Alfredo Laguitan and to a term of imprisonment and indemnity for the injuries they had inflicted upon Francisco Orsino.

These two appellants, together with Pedro Reyes, Eusebio Perez, Gervasio Due and Marcelo Due, were charged in two separate cases with the violent death of Benjamin Nery and Alfredo Laguitan. In another, they were accused of having caused physical injuries to Francisco Orsino. A joint trial was ordered. At the beginning thereof the fiscal filed a motion for the dismissal of the case against Eusebio Perez for insufficiency of evidence. This was granted. He also asked that the accused Pedro Reyes be discharged so that the latter may be used as prosecution witness. This was also granted.

Evidence for both sides was later submitted in open court; and after a careful consideration of the same the Honorable Antonio G. Lucero, Judge, found the accused Maximino Austria *alias* Severino Austria *alias* Big Boy and Vicente Gatchalian *alias* Magallanes guilty of the offenses set forth in the different informations. His Honor therefore sentenced them as follows:

"* * * the court hereby finds the accused Maximino Austria *alias* Severino Austria *alias* Big Boy and Vicente Gatchalian *alias* Magallanes guilty, beyond reasonable doubt, of the crimes charged in the information and sentences them as follows: (*a*) in criminal case No. 367, to *reclusión perpetua*, with the accessories of the law, to indemnify jointly and severally the heirs of Pvt. Benjamin Nery in the sum of ₱2,000, without subsidiary imprisonment in case of insolvency, and to pay the costs; (*b*) in criminal case No. 367–A, to *reclusión perpetua*, with the accessories of the law, to indemnify jointly and severally the heirs of Pvt. Alfredo Laguitan in the sum of ₱2,000 without subsidiary imprisonment in case of insolvency, and to pay the costs; and (*c*) in criminal case No. 367–B, to an indeterminate penalty of six (6) years of *prisión correccional*, as the minimum, to twelve (12) years and one (1) day of *reclusión temporal*, as the maximum, to indemnify jointly and severally Pvt. Francisco Orsino in the sum of ₱1,000, without subsidiary imprisonment in case of insolvency and to pay the costs. In these three cases the accused are entitled to be credited with one-half of their preventive imprisonment."

Gervasio Due *alias* Oliveros and Marcelo Due *alias* Pipit have not been arrested nor tried.

The transcript of the testimony taken before the Pampanga judge and the documentary evidence in connection therewith are all before us, and the Court, after examining the same, has voted to affirm the verdict of guilt of appellants Austria and Gatchalian, because from the evidence it appears beyond reasonable doubt that: In the night of Good Friday of 1946 (April 19) while religious celebrations were in full swing in the barrio of Cacutud, Arayat, Pampanga and the "pabasa" was being performed (reading and singing of the story of the Crucifixion) the herein appellants assisted by Marcelo Due *alias* Pipit, Gervasio Due *alias* Oliveros and one Peping, all armed with pistols, approached three members of the military police, Philippine Army, i. e. privates Benjamin Nery, Alfredo Laguitan and Francisco Orsino—hereafter to be designated MP's for short—who were peaceably seated, entirely unarmed, in a store watching the affair. At the point of their guns they drove the latter to the road leading to Magalan and at a short distance (about ten meters from the "pabasa" or "cenaculo") shot them from the back and left them lying on the ground.

The attackers were Huks, and the motive of the killing was obviously the enmity existing between that outlaw organization and the forces of peace and order.

Nery and Laguitan died as a result of the shooting. Private Orsino suffered serious injuries. His leg, shot and fractured, needs about six months to heal.

Pedro Reyes turned state evidence, but he did not confirm every statement he had previously made at the fiscal's investigation. He testified, however, that at about seven o'clock that night he saw, among the people gathered at the "pabasa," "Pipit" (Marcelo Due) Piping, Gervasio Due *alias* Oliveros, Vicente Gatchalian and Maximino Austria *alias* Big Boy; that Pipit and Piping (Felipe Sese) called him and told him that Oliveros wanted to talk with him; that talking with Oliveros he was invited by the latter to speak to the MP's (the members of the military police, Nery, Laguitan and Orsino); that he refused; that thereafter he heard several detonations; that he ran to the rice field and there he met Oliveros (Gervasio Due) and Gatchalian talking, the former declaring he was sure the MP he had shot will die and Gatchalian making the same assurance as to the MP he (Gatchalian) had shot in turn. Reyes had previously told the authorities in his affidavit Exhibit A, in addition to what he related in court, that Oliveros, Magallanes and Big Boy had approached the three MP's and lined them up on the road, after which shots were heard. Enough, however, may be gathered from his testimony in open court to identify Gatchalian as one of the assailants, the conversation he overheard in the rice field being admissibile as an admission and as part of the *res*

gestæ. (U. S. *vs.* Remigio, 37 Phil., 599; People *vs.* Nakpil, 52 Phil., 985; People *vs.* Durante, 53 Phil., 363.)

Francisco Orsino, one of the victims, narrated the incident substantially as above described, but could not identify the aggressors except the defendant Severino Austria whom he pointed out as his treacherous assailant.

Lieutenants Fidel Martinez and Secundino Quintans declared under oath that Vicente Gatchalian admitted before the latter, while under investigation, that he had shot one of the MPs who died later. Gatchalian even showed how he had fired at the MP from the back, posing for a picture (Exhibit H).

Lieutenant Quintans likewise asserted that Severino Austria had voluntarily signed the confession Exhibit E wherein said Austria made the following statements:

"Q. What did you do on that same night?—A. While we were at the back of the 'Cenaculo', OLIVEROS ordered PEPIT and FELIPE SESE to see if there are any MP soldiers in the vicinity of the 'Cenaculo'. PEPIT and FELIPE SESE did as ordered and came with the information that there are three MP soldiers in one of the stores near the 'Cenaculo'.

"Q. What did you do when you were informed thus?—A. BASIBAS, MAGALLANES, BATUIN, OLIVEROS, and I went to the place where the MP soldiers were and I myself talked with one of the said soldiers, and I asked him to stand and come with me where we could talk together, but he refused, so I drew my pistol and forced him to come with me. OLIVEROS held one of the soldiers, Magallanes held the other and forced them to come with us.

"Q. Why and where were you taking the MP soldiers?—A. To talk with them in front of the house of SEGUNDO GUEVARRA.

"Q. What happened when you took the soldiers?—A. While we were walking about 10 meters from the 'Cenaculo', the soldier who was with me tried to grab the pistol that I was holding with my right hand. Suddenly I heard about 4 shots from behind, so I also fired at the soldier who was with me."

The picture of Austria reenacting the crime is Exhibit G.

We are thus satisfied from the foregoing of the guilty participation of the appellants in this gruesome business. Their defense of alibi is weak and untenable. The Solicitor General's brief substantially proves conspiracy between them and their other co-accused who are still at large. There are three offenses: two murders and one serious physical injuries, for which all the accused must do penance irrespective of the actual deeds of each.

Wherefore, the penalty imposed on the appellants being in accordance with law, it is hereby affirmed, with costs.

Moran, C. J., Parás, Feria, Pablo, Briones, Tuason, and *Montemayor, JJ.*, concur.

PERFECTO, *J.*, dissenting:

On the night of April 19, 1946, while attending a *pabasa* (reading of life story of Christ) in barrio Cacutud, Arayat, Pampanga, three MPs,—Benjaman Neri, Alfredo Laguitan

and Francisco Orsino,—were taken by four armed individuals, brought to the road leading to Cabiao and there shot by them. As a result Neri and Laguitan died. Orsino recovered from his wounds.

The question in this appeal is whether or not appellants Vicente Gatchalian and Maximino Austria *alias* Severino Austria participated in the crime.

Six witnesses testified for the prosecution.

Eusebio Perez, 23, testified that he attended the *pabasa,* where, at about 7 o'clock at night, of April 19, 1946, in barrio Cacutud, Arayat, Pampanga, he saw, among others, Maximino Austria. (2–3). At 10 o'clock, "While we were eating there was an explosion" (3). The witness heard three rapid explosions, followed by a fourth which was stronger. (3). "I took my wife by the arm and we ran, the people scattered." He went to Lacmit, about three kilometers away. The next day he saw three persons, including Maximino Austria who told him that they were going to hide because something happened in Cacutud, as they were engaged in shooting. (4–5).

In his testimony, the witness did not mention the presence of Vicente Gatchalian.

Pedro Reyes, 33, the information against whom was dismissed because he was utilized as witness for the prosecution, testified that among those present in the *pabasa* were Vicente Gatchalian and Maximino Austria. (13). While there, Pipit (Marcelo Due) and Piping (Felipe Sese) called him to a place in front of the altar because Oliveros wanted to talk to him. (14). Oliveros told him to come along with him and approach the MPs and speak to them, but Reyes refused. (15). While Reyes was talking to Oliveros, Vicente Gatchalian "was not there and I don't know where he was." (16). Then Reyes returned to his place, and, while returning, there was a commotion and a moment later he heard shots. "I only heard two strong explosions. I did not see MPs." (15). "After the explosions we ran into the field." In the field he came to Oliveros and Gatchalian talking. (16). He heard Oliveros saying he was sure that the person he shot would die because he shot him four times, and then ask Gatchalian if the person he shot was also going to die, and Gatchalian answered he would. The other persons there present were Pipit and Piping. (17). In the field he saw also Maximino Austria with Oliveros, Pipit, Piping and Gatchalian. (21). Austria said that his pistol jammed, but hit an MP. (22). The conversation was overheard by Reyes when he was about 7 or 8 meters away from those talking. (24–25). Besides Vicente Gatchalian, Oliveros, Pipit and Piping, "no one else" was "present there in the field." (17). The night was dark, there was no light in the field. (26). Reyes was not sure of the identity

of the persons talking because they were far away. (27). After hearing what he heard, "I went home." (17).

Fidel Martinez, 29, testified that he was present during an investigation of the incident conducted by Lt. Quintans. (29). In that investigation, Gatchalian stated that "they approached the MPs whom they found unarmed. Each and everyone of them grabbed one MP." (30). "And fired four shots at the MP and he was sure that the MP will die." The statement was not put in writing because Lt. Quintans was then too occupied. (31).

Federico G. Cayco, 32, is the physician who treated the victims in the station hospital in Camp Olivas. (35–44).

Segundino S. Quintans, 28, testified that he investigated Gatchalian and Austria. (46). Exhibit E is the written statement of Austria. (46). He was not able to put in writing the declaration of Gatchalian because he did not have time to do so. Gatchalian told him that "he was one of those who shot my soldiers on April 19, 1946." (48). Exhibits F, G and H are photographs taken of the reenactment of the incident made by Gatchalian and Austria. (49–50).

Francisco Orsino, 20, declared that he was shot on April 19, 1946, in Arayat at the crossing of the road going to Magalan. He was with Alfredo Laguitan and Benjamin Neri (53). "On that night we were sitting on a bench near a lady's store, four armed persons approached us and told us not to move." One of them "took me towards the road to Magalan." Laguitan and Neri were also dragged behind him. (54). "As we reached a place where there were many people I tried to grab the pistol of the person holding me, but in the attempt I was not successful because he was stronger than I and that happened to shot me." He was shot on the knee. "I heard two shots before I was shot. When I was shot I fell unconscious and I did not know what happened next." (55). The person who shot him was Severino Austria. He could not identify the persons who held Laguitan and Neri nor the fourth person. (56). The witness was shot "just in front of the place where the *pabasa* was being held." (60). When the witness was taken he was sitting with his companions in front of a store about 20 meters from the place where the *pabasa* was being held. The store was lighted. (61). Austria was wearing a buri hat. (62). There were many people in the store. (63). There were more than 10. He tried to grab the pistol of Austria after walking with him about 20 meters. (64).

The witnesses for the defense testified in substance as follows:

Segundo Guevara, 61, whose house was located at about 100 meters from the *pabasa,* said that he saw there Vicente Gatchalian at about 7.30 p.m. (73). He invited Gatchalian, besides Evaristo Paras, Emilia Mallari, and a baby, to eat

in his house. (74). "When they were about to finish eating" after eight there were heard four explosions. "I ran to the window to see what happened and I saw people running down the street." Gatchalian "snatched his child from his wife and laid down beside the palay in sacks." (75). Gatchalian did not go down but remained in the house the whole night "because I invited them to sleep in my house." (76).

Evaristo Paras, 67, declared that in the afternoon of April 19, 1946, he was in Lacmit, from where he went to the *pabasa* with Vicente Gatchalian, the latter's wife and their small child. They reached the *pabasa* at about 5 o'clock and remained there up to 7:30, more or less. (80). Segundo Guevara invited them to his house where he served them food. When they were about to finish eating, "we heard several shots and the confusion among the people and we had to stop eating." Gatchalian did not go down. (81). The witness left the house of Segundo Guevarra the next morning. (82).

Perpetua Austria, 14, was living with his parents, Severino Austria and Leona Ramos, in their home in barrio Lacmit. On April 19, 1946, his father attended the *pabasa*. That evening her mother, who was on the family way and had been exposed to heat, had stomach-ache. (85). So "I fetched my father from the chapel," and they arrived home at about 7 o'clock p.m. "My father boiled water and applied enema. He also rubbed her stomach and legs." Perpetua went down only to get guava leaves, and retired at about 11 o'clock. Her father did not go down. (86).

Leona Ramos, 32, declared that she had stomach-ache in the evening of April 19, 1946, and asked her daughter Perpetua Austria to fetch her father from the chapel. (93). Father and daughter arrived home at about 7.30 p.m. Austria had guava leaves boiled and administered her enema. She was on the family way. "I did not sleep the whole night. I could not sleep very well because my stomach-ache was intermittent." Her husband was at her side sometimes rubbing her stomach. (94). Her husband did not go down. (94–95).

Vicente Gatchalian, 24, testified that he went to Cacutud between 5 and 6 o'clock with his wife, a child and Evaristo Paras. He parked his calesa at the house of Segundo Guevara. (98). They went to the place of the *pabasa,* where they remained for about more than one hour. At 7:30, he left the *pabasa* together with Segundo Guevara, Evaristo Paras, his wife and his child and went to the house of Segundo Guevara. "When we were about to finish eating we heard shots." (99). It took place at about 8 o'clock. "I took cover behind the palay in sacks that was near the bamboo wall." He did not leave anymore the house of Segundo Guevara that night. (100). It is not true that he

made any confession to Lt. Quintans. Lt. Quintans asked him and insisted that he was one of the authors of the killing on April 19, 1946 "but I answered that I was not one of them." (101). He appears in the picture Exhibit H, notwithstanding his unwillingness, and although he did not take part in the killing, because "Sgt. Macasaquet told me which I preferred to reenact the crime or to lose my life. Being a family man because of the threat upon my life, I enacted what I never did." (102). The witness has been tortured by Sergeant Macasaquet and other MPs. They gave him fist blows and clubbed him until he lost consciousness. As evidence of the torture, the witness exhibited a black mark one centimeter long and one-half centimeter wide in one of his arms. (104). He exhibited also "a whitish scar on his right side about two inches long and one millimeter in width, and another scar in the middle of the stomach about one inch long and one millimeter in width, and he says that his ribs were dislocated." "While they were torturing me they persisted in asking me if I was one of those who killed the MPs." When we left the camp on a truck to the place where that picture (Exhibit H) was taken, Sgt. Macasaquet brought three shovels saying that if we were not going to do what they wanted us to do they will make us dig our graves." (105). The witness had to pose for the picture "because I was afraid they would kill me, as they said they would." (106). The witness was undressed and maltreated in the presence of Lt. Quintans. (112).

Maximino Austria, 39, denies having taken part in the killing. (114). He attended the *pabasa* at about 6 o'clock in the afternoon. After one hour he was fetched by their daughter "because my wife was having stomach-ache." Since he arrived at his home at Lacmit after 7 o'clock p.m. he did not go down the whole night. (116). He ordered his daughter to take guava leaves and boil, after which he administered enema to his wife. He slept at about 12 because his wife was on the family way and he was afraid that she was to give birth. (116). The witness signed Exhibit E. He was investigated by Lt. Quintans. (117). The answer attributed to him that he was with those who took part in the killing was not given by him. (119). "They insisted that I admit that these people, whose names were in a list, were with me on that night but because I did not want to admit the fact, Sgt. Macasaquet hit me on the head and I fell as a result thereof." It is not true as appears in Exhibit E that he admitted he had been provided with firearms. (120). The statement attributed to him in the exhibit as to his participation in the killing was not given by him. Regarding the signing of Exhibit E, "I asked that the document be read to me in order that I would be informed of its contents, but

Sgt. Macasaquet picked a hammer and hit me on the head and I fell unconscious, perhaps for about two minutes. When I regained consciousness they manacled me and I just signed it without knowing what I did." The witness does not know how to speak and write English. He never studied English. (126). It was Sgt. Macasaquet who ordered the witness to pose for the picture Exhibit F. "They brought us from their camp on a truck at about 10 o'clock to that spot with three shovels." (127). "They told us they would kill us in case we will not do it and the purpose of the three shovels was to make us dig our own graves." (128). In connection with this case "I was not arrested, but I surrendered." (131). "The MPs came to my house in San Isidro on a Sunday looking for me but I was out fishing and when I came back my wife informed me, so I sent for my wife's nephew in Mexico and asked him to accompany me to the MP of Mexico." (132). "I was brought to Arayat on a Tuesday, we reached there about 2 o'clock where they immediately stripped me of my clothes and they began maltreating me." Sgt. Macasaquet insisted that I admit participation of that act." (133). When the witness was brought to the fiscal's office, Orsino "did not point to me. They asked him then if he knew me and he said that he did not." "Before the investigation I was maltreated for two days and one night and I was also maltreated during the investigation, because I refused to admit what was written on that paper. They gave me fist blows, trampled upon my fist." (134). It is not true that he saw Eusebio Perez on April 20, 1946, and that he stated to him that he wanted to hide. (135).

Considering the whole of the evidence on record, we cannot but entertain serious doubt as to appellants' guilt.

The testimony of Eusebio Perez to the effect that on April 20, 1946, appellants told him that they wanted to hide because of their participation in the shooting the previous night, is absolutely incredible. His testimony attributes to appellants such glaringly stupid attitudes that could not have been expected except from insane individuals or imbeciles. If appellants had wanted to hide, it is incomprehensible that they should start by admitting to Eusebio Perez that they took part in the shooting affray and then confiding to him their intention to hide. The testimony of Pedro Reyes cannot be taken seriously, not only because it comes from a polluted source, but because it is inherently unbelievable that the authors of the shooting could have been so reckless enough to make comments on the results of the shooting in the field, near the scene, and at the hearing distance of Pedro Reyes. According to the latter, everybody, including the assailants, ran away afield; but it is unbelievable that the assailants should stop in their flight

just to make comments and seemingly to afford Pedro Reyes the opportunity to over-hear their conversation. The story is so unnatural and so contrary to human ways to be accepted. The testimony of Pedro Reyes concerning the incident in the *pabasa* itself, before the shooting, does not in any way involve any one of the two assailants.

The testimony of Orsino would incriminate only Severino Austria. (56). But there is serious doubt as to whether he was really able to identify his assailant to be Severino Austria. According to him, the assailant was wearing a buri hat, and according to several witnesses, the night was dark. Under the circumstances, it was naturally very difficult for him to identify his assailant. As a matter of fact, when Orsino was confronted by Austria in the fiscal's office, he was not able to identify Austria. The testimony of Austria on this matter, brought up when he was cross-examined by the fiscal, appears uncontradicted and unchallenged. The prosecution did not even call Orsino to belie the testimony of Austria.

The testimonies of Fidel Martinez and Segundino S. Quintans as to the supposed oral admission of Vicente Gatchalian and the written statement Exhibit E signed by Severino Austria, are completely valueless because of the uncontradicted testimonies of the two appellants to the effect that they were maltreated, tortured and threatened to be killed. To make the intimidation more effective, three shovels were supplied at hand for the digging of the graves intended for the appellants. Neither Martinez nor Quintans ever dared to testify again to rebut the declarations of Gatchalian and Austria as to the intimidation and third degree to which they had been subjected and in relation with which they had shown visible and tangible marks on their bodies, such as the black spots and scars which they exhibited at the trial. Sgt. Macasaquet was singled out by appellants as one of those who inflicted the maltreatments and torture, and yet the prosecution dared not to call Sgt. Macasaquet to the witness stand to deny the declarations of the two appellants.

Orsino testified that the shooting took place in front of the place where the *pabasa* was being held and in the presence of many people. Not one of those many who had witnessed the shooting was called by the prosecution to testify as to who did the shooting and how it took place, with the single exception of Orsino. The failure to present such eye-witnesses has greatly weakened the very doubtful testimony of Orsino as to his having allegedly identified his assailant.

As regards Maximino Austria, there appears on record his uncontradicted testimony that he was not arrested, but had surrendered himself upon learning that he was being sought by the MPs. Such conduct cannot be expected from

one with guilty conscience, but from a person who has nothing to be afraid of.

Appellants' guilt not having been proved beyond all reasonable doubt, they are entitled to acquittal. We vote for their immediate release from confinement.

Judgment affirmed.

[No. L–1591. January 20, 1949]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* CONRADO COBALIDA, defendant and appellant

[No. L–1593. January 20, 1949]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* GREGORIO REFUERZO, defendant and appellant

1. CRIMINAL LAW; MURDER; EVIDENCE; FINDINGS OF FACT BY THE TRIAL COURT.—Testimony has to be judged largely on the witnesses' manner and demeanor on the stand which the trial judges alone were in a position to observe, and on the basis of which they made their finding. With these considerations in mind, we are not disposed to disagree with the trial court on a matter purely of credibility.
2. ID.; ID.; ID.; "FALSUS IN UNO, FALSUS IN OMNIBUS".—The witnesses' false or exaggerated statements on other matters should not preclude the acceptance of such of their evidence as is relieved from any sign of falsehood. The maxim *falsus in uno, falsus in omnibus* deals only with the weight of evidence and is not a positive rule of law. (35 C. J. S., footnote, 736.) The rule is not of universal application. (*Id.*, footnote.)
3. ID.; ID.; INTOXICATION AS MITIGATING CIRCUMSTANCE.—Intoxication is to be appreciated as a mitigating circumstance. There is positive evidence, supplied by the prosecution, that the defendants had been drinking.

APPEAL from a judgment of the People's Court.

The facts are stated in the opinion of the court.

Evaristo R. Sandoval for appellants.

Assistant Solicitor General Guillermo E. Torres and *Solicitor Ramon L. Avanceña* for appellee.

TUASON, *J.:*

Gregorio Refuerzo and Conrado Cobalida were prosecuted for treason under separate informations in the People's Court. As the charges against them were identical and the evidence the same, the two cases were tried jointly, but a separate decision was handed down in each case. We will dispose of the two cases in one decision.

The charges against the two accused may be condensed under three headings: (1) That they were members of a Japanese military organization called "Jutai" and accompanied Japanese troops and Filipino constabulary patrols for the purpose of confiscating foodstuffs and apprehending

guerrillas and their sympathizers; (2) that, in company with other members of "Jutai," they "unlawfully and treasonably hacked one Pelagio Arana to death" for the reason that the victim was a USAFFE and a guerrilla; and (3) that they came to the house of Ignacio Macantan for his guerrilla activities and tortured Macantan and his wife for refusing to reveal the whereabouts of Macantan's brother Cirilo who was a guerrilla.

There is a fourth charge against Refuerzo alone, to the effect that he spread pro-Japanese propaganda and made pro-Japanese statements urging the Filipinos to cooperate with the Japanese. This charge was abandoned.

One of the charges in count 1 was touched only casually; the other not at all. No evidence was presented on alleged arrests of guerrillas or guerrilla suspects and the evidence on defendants' alleged joining a Japanese armed force is very deficient. The statements of the witnesses do not give the dates or the occasions when, as the witnesses said, the defendants performed sentry duties, commandeered foodstuffs for the Japanese, or committed other acts as alleged members of "Jutai." Bearing guns, which it is said they did, was not in and by itself sufficient proof of membership in that or any other military or semi-military body. There is not even any evidence of the creation of such organization or of its purpose, other than the sweeping conclusion of the witnesses. As an overt act of treason, this charge can not therefore be said to have been established in accordance with the two-witness requirement.

On count 2 Ignacio Macantan, Marcelo Piko and Benito Arana testified. The first of these witnesses declared in substance that on May 25, 1943, at about 3 o'clock in the afternoon, in barrio San Diego, municipality of Burauen, Province of Leyte, they saw Gregorio Refuerzo and Conrado Cobalida drinking tuba with other Filipinos and Japanese in Gregorio Refuerzo's house, armed with rifles. The town was deserted, the people having fled to and were staying in the mountains. After the Japanese had left, Pelagio Arana passed by and Gregorio Refuerzo, Conrado Cobalida and four other Filipinos whistled to him, but Arana paid no attention and continued on his way. Conrado Cobalida fired into the air and forthwith pursued him. On catching up with Arana, Conrado seized him by the hands, Feling Pedere stabbed him in the stomach, and Gregorio Refuerzo struck him in the head with a bolo. Arana upon being wounded, crumpled and fell forward. The wounds in the abdomen and in the head were big, the scalp having nearly been chopped off. Arana was an ex-USAFFE and a guerrilla.

This testimony of Ignacio Macantan was corroborated by Marcelo Piko with some variations as to details.

Benito Arana, brother of the deceased, testified that in May, 1943, he and his brother lived in barrio Bunauan, municipality of Burauen, Leyte; that his brother, on May 25, went to barrio San Diego to look for food; that as Pelagio did not return he looked for him on the 28th; that he met Ignacio Macantan in their evacuation place and Macantan told him that his brother had been killed by Gregorio Refuerzo and companions; that he went to the place indicated by Macantan and found his brother's dead body on one side of the road with many wounds, one of which was in the head; that as the foul odor was unbearable, he did not touch the cadaver but came back much later to recover the bones. The place was about ten kilometers from his home.

We are conscious of Macantan's and Piko's strong tendency to exaggerate and distort the truth born of personal animosity and an urge for revenge against the accused. Thus warned, we have examined the evidence with due caution. Still our opinion is that Pelagio Arana was killed by the appellants and four others in the manner related.

Benito Arana has not been shown to have any cause to perjure himself in a serious crime against the defendants and his testimony is impressed with the ring of veracity. Although Benito's testimony, so far as his personal knowledge went, proved only Pelagio's death through violence, yet the information he got from Macantan that the accused and their companions had slain the deceased, was free from any contamination of bias. The information has the appearance of spontaneity and was given soon after the commission of the crime. There was then no thought of commencing prosecution against the accused; and it was over a year before Macantan had any ill-will toward the defendants. It was in July, 1944, that Macantan was tortured by the Constabulary with the aid or at the instance of the defendants.

This is not saying that Macantan's and Piko's testimony on the killing has to be rejected. This testimony has to be judged largely on the witnesses' manner and demeanor on the stand which the trial judges alone were in a position to observe, and on the basis of which they made their finding. With these considerations in mind, we are not disposed to disagree with the trial court on a matter purely of credibility. There is no inherent improbability in the evidence on the murder, nor do we find any circumstance of weight which would tend to disprove it. The witnesses' false or exaggerated statements on other matters should not preclude the acceptance of such of their evidence as is relieved from any sign of falsehood. The maxim *falsus in uno, falsus in omnibus* deals only with the weight of evidence and is not a positive rule of law. (35

C. J. S., footnote, 736.) The rule is not of universal application. (Id., footnote.)

However, we are not satisfied that the killing was of political nature, motivated by Arana's being a supposed ex-USAFFE or a guerrilla. As a matter of fact, Macantan's and Piko's testimony that Arana was actively hostile to the Japanese was not corroborated by the latter's brother. It looks more as though the defendants and their companions committed the deed in a spirit of lawlessness and fiendish deviltry under the influence of liquor, or were angered by Arana's refusal to halt when he was signalled to stop. It was wartime. Respect for life and property was at its lowest ebb brought on by a reign of terror and impairment of the moral fiber.

On count 3 Ignacio Macantan testified substantially as follows: On or about July 8, 1944, he was at his home in San Diego, Burauen, with his wife and five children. At about 9 o'clock a. m. the two accused with Feling Pedere, Santiago Pedere and Simeon Refuerzo arrived. The two Pederes, Simeon Refuerzo and Gregorio Refuerzo came up to the house with two Constabulary men and asked him for his brother Cirilo. He answered that since the outbreak of war he had not seen his brother, upon which he was told he was lying and that he did not want to work on the landing field. He was pushed violently and as he was very near the door, he fell to the ground. After he fell Feling Pedere seized him and tied his hands with a rope which Pedere fetched from a neighboring house. From his home, he was marched off to the barracks by Emillara, Cristeto Rellador, Luis Guiwan and Simeon Refuerzo. Avila and Emillara were Constabulary soldiers. In the barracks he was hung in midair and was subjected to other forms of cruelty. Those who tortured him in the barracks were Constabulary soldiers. The maltreatment continued for four days and four nights. On the last day, he was handed documents to sign. He signed them but did not know their contents. Thereafter he was released and he found his wife sick and weak in her parents' home; she had had an abortion. He was also told that his carabao had been taken by Gregorio Refuerzo.

On cross-examination, Macantan said that he signed Exhibits 1, 2, 3 and 4; that he was tortured not only because his brother was a guerrilla but also because of a carabao; that in the Constabulary barracks they told him that he had slaughtered Simeon Refuerzo's carabao and he denied the charge; that he signed the above documents because they told him that the carabao was already in their hands. He admitted that on July 8, 1944, he slaughtered a carabao and that he was brought to the Constabulary headquarters in connection with that carabao.

From Macantan's testimony it is manifest that he was tortured not by the accused but by members of the Constabulary, and not for refusing to tell the whereabouts of his brother but because he was accused of stealing and butchering a carabao of Simeon Refuerzo, son of Gregorio Refuerzo. The signing of the exhibits above mentioned by the witness at the instance of his torturers reveal the cause of his torture to be theft and not his refusal to disclose his brother's whereabouts or his being suspected as a guerrilla. The carabao and other livestock which he said were carried away by the accused or which he was forced to part with, were in exchange for the stolen cattle. As to Macantan's wife, it is also apparent that the latter was not deliberately maltreated but was pushed away when she interfered with the apprehension and punishment of her husband. That she had an abortion seems to have been due not only to this pushing but perhaps also to the anguish she must have endured over her husband's fate during his confinement in the Constabulary quarters.

In conclusion, we find appellants guilty of murder, unconnected with treasonable intent, for the slaying of Pelagio Arana alleged in count 2. For this offense, intoxication is to be appreciated as a mitigating circumstance. There is positive evidence, supplied by the prosecution, that the defendants had been drinking.

The appealed judgment is modified so as to sentence the appellants to an indeterminate term of 8 years and 1 day of *prisión mayor* to 17 years and 4 months of *reclusión temporal*, with the accessories of law, jointly and severally to indemnify the heirs of the deceased in the sum of ₱6,000, and each to pay one-half of the costs.

Moran, C. J., Pablo, Bengzon, and *Montemayor, JJ.*, concur.

Mr Justice Ozaeta voted in accordance with this decision.—MORAN, *C. J.*

PERFECTO, *J.*, dissenting:

PROSECUTION

The witnesses for the prosecution testified in substance as follows:

1. Ignacio Macantan, 33, married, farmer and resident of San Diego, municipality of Burauen, Province of Leyte. During the Japanese occupation he was living in San Diego, but in 1943, he was living in San Andres, same municipality. "On May 25, 1943, at about 3 p.m., * * * we went to barrio San Diego to look for food and arrived there at 3.30 p.m. In San Diego, I saw Gregorio Refuerzo, Conrado Cobalida, Feling Pedere, Santiago Pedere, Luis Guiwan and Simeon Refuerzo." They were drinking

tuba. (2). They were in the house of Gregorio Refuerzo. There were four Japanese talking with them; they were armed with rifles. "The Japanese left later and the six persons * * * hissed at Pelagio Arana. Pelagio Arana did not listen and proceeded to his direction. All of a sudden Conrado Cobalida fired shots and Arana was trembling. Conrado Cobalida proceeded to where Arana was and when Cobalida overtook Arana, he took hold of Pelagios' hands and held them behind, whereupon. Feling Pedere stabbed him in the stomach. Gregorio Refuerzo struck him on the head and Conrado Cobalida immediately released him." Arana was stabbed with bolos. The other companion also "unsheathed their bolos and stabbed Pelagio Arana." (3). They used bolos. After Arana was released by Cobalida, he died. He was already down when Cobalida stabbed him. After that the six persons proceeded to the town of Burauen. Then "I went to Arana to find out how many wounds have been inflicted on him." (4). "There were about ten wounds." "The wounds were big in the abdomen and in the head because the scalp on the head was almost taken off." Arana was in the mountains as a guerrilla; he was a USAFFE soldier; the witness saw him drilling in the mountain of Bunawa. Arana was wanted by the Japanese "Jutai," composed of Filipinos who "are servants of the Japanese." "Their duties were: to bring to the Japanese tuba, sweet potatoes, chickens and firewood and other things the Japanese needed." The two accused belonged to that organization. (5). On June 15, 1943, the witness saw the accused in San Diego, telling the people to work in the landing field because there were supplies coming. (6). On or about July 8, 1944, "at about 9 a.m., I saw the accused, Gregorio Refuerzo and Conrado Cobalida, with Feling Pedere, Santiago Pedere, and Simeon Refuerzo going to the direction of our house * * * they asked me where my brother was and pushed me down to the ground." The witness answered that "since the Japanese arrived, my brother (Cirilo Macantan) never came here." Then the two accused said: "You are lying and you do not want to work in the landing field." "When I was already on the ground Feling Pedere took hold of me and tied my hands." (7). "They pushed me and brought me to the headquarters." The witness was accompanied by Emillara, the BC soldier, Cristeto Rellador, Luis Guiwan and Simeon Refuerzo. When they arrived at the garrison they told him: "You are a guerrilla. If you don't tell us where your brother is, we will kill you." Avila and Emillara were the ones who told him so. "After that, I was tied behind my back and my neck and stomach and made to stand on a ganta barely touching the ground when the ganta is removed. Then I

was struck by Avila with the butt of his rifle and boxed my body." "I was suspended." "I was like a carabao because they placed weights on my neck and below it." (8). "I vomitted blood. They also forced me to drink waste matter which was used after cleaning ulcers. The two BC's forced on my mouth the husks of corn and after that forced me to bite a steel pipe." The witness was suspended four days and four nights. "My hand and wrist were swollen." "They showed me a document and said: 'If you will sign this document, you will be set free and will not be killed.'" The witness signed the document, the contents of which he does not know. After that "I was released." (9). When the witness reached his house he did not find his carabao, because: "It was taken by Gregorio Refuerzo." It was a female carabao. His credential of ownership was lost the same day the carabao was taken. (10). The witness was investigated in the Constabulary garrison, but no mention was made of the carabao. Exhibit 1 is the certificate of ownership. Although the signature on Exhibit 2 is his, the witness does not know the contents of that certificate. "I signed this certificate because of the severe punishment inflicted upon me." The witness signed also Exhibit 3, "because I was afraid and also because of the punishment inflicted upon me." (11). The truth is that the investigation of the witness was not only to find out if his brother was a guerrilla, but also because of the carabao. "I signed the documents because Gregorio Refuerzo said that the carabao is already in their hands." It is not true that the witness slaughtered any carabao before July 8, 1944. He did not receive the sum of ₱299, in Japanese currency, in payment of the carabao that was killed. "I did not get it because I already left, although I saw that money." The witness recognized his signature in Exhibit 4, "but I signed it because I was punished." The witness was taken to the Constabulary headquarters in connection with the carabao. (12). The witness said that he heard that Mayor Cordero of Burauen is dead. "I was not investigated regarding the carabao." "They told me that I was a guerrillero and feeding my companions in the mountain." (13). "They did not ask me about that carabao." Later on, they investigated him in connection with the carabao of Simeon Refuerzo, supposed to have been stolen, and said that "I have slaughtered his carabao." "I told them I have not slaughtered any carabao." Gregorio Refuerzo and Emillara asked the witness about the carabao three days after the 8th of July, whether he had slaughtered it. (14.) The female carabao had fallen in the hands of Gregorio Refuerzo. (15).

The same witness, Ignacio Macantan, testified that he happened to be in San Diego on May 25, 1943 with Mar-

celo Piko, "because, we were looking for food." Piko is his brother-in-law. (16). Mayor Jose Cordero was not in the garrison when the witness signed Exhibits 2, 3 and 4; the witness did not appear before Mayor Cordero. (16–17).

2. Marcelo Piko, 26, married, farmer, resident of Burauen, Leyte: During the Japanese occupation he was living in the barrio of San Andres. In the afternoon of May 25, 1943, he was in an evacuation place. He did not go to another place. (17). Pelagio Arana died on May 25, 1943. "When we were going to San Diego from our evacuation place to get bananas * * * on our way near Gregorio Refuerzo's house, we heard some noises. I saw in the house of Gregorio Refuerzo four Japanese, Gregorio Refuerzo, Simeon Refuerzo, Conrado Cobalida, Feling Pedere and Santiago Pedere. They were drinking tuba. The Japanese left for Burauen so that Gregorio Refuerzo, Conrado Cobalida, Feling Pedere, Santiago Pedere and Luis Guiwan went down from the house and went to the street. They saw P. Arana, and Conrado Cobalida hissed at him but Pelagio Arana did not stop. Conrado Cobalida then fired a shot with his revolver to the air and P. Arana then stopped. Cobalida proceeded towards Arana and Cobalida asked him where he was going and who were his companions." "Cobalida held both hands of Arana on the back and tied him. Gregorio Refuerzo stabbed him and Conrado Cobalida released him. Cobalida struck him before doing so. After that, the companions of Cobalida also stabbed Arana and they left for the town. Feling Pedere also clubbed Arana before he died." (18). All used bolos. "I, with Ignacio Macantan, came closer to where Pelagio Arana was and found him lying on the ground on his right side." "He has wounds in the abdomen and on the head which were the big ones." Arana was a guerrilla. (19). He was killed because he was suspected as such. There was no conversation between the accused and Arana. (20). The witness was about ten *brazas* from the house, Macantan and the witness hid themselves, they were crouching on the ground. "We were afraid to move because we might be seen." "I was bent on observing on what was happening in the house." (21). The accused were members of "Jutai"; they abandoned their house in San Diego but they went once in a while to San Diego, they were afraid of the guerrilleros. In May, 1943, there were no people residing in San Diego. (23). During the Japanese occupation San Diego was abandoned by the residents, who returned only when the Americans arrived. In San Diego there was no food then. Gregorio Refuerzo used to go to San Diego every day to gather tuba. (24). The accused and their companions had only bolos. At that time guerrilla

bands were roaming around in San Diego. Conrado Cobalida did not shoot Arana with his revolver but stabbed him with a bolo. (26). Before the war, the accused were criminals. "He was imprisoned here in Tacloban for three months for the crime of killing Econg Refuerzo." (27).

3. Trinidad Piko, married, housekeeper, resident of San Diego, Burauen, Province of Leyte, wife of Ignacio Macantan: At 9 o'clock, July 8. 1944, several persons, including the two accused, went up to her house and asked her where Cirilo Macantan was. She answered she did not know. (27). Gregorio Refuerzo and Feling Pedere said: "You are all liars. You are guerrillas." They pushed her husband to the ground. Simeon Refuerzo gave him a blow. "Upon seeing my husband on the ground, I went down also and Conrado Cobalida took hold of me also." Ignacio Macantan was maltreated by the accused and Luis Guiwan. "Everytime I tried to go near my husband, they pushed me and I fell down." Feling Pedere tied his hands on the back, and brought him to town. "Gregorio Refuerzo saw our carabao and took it while Conrado Cobalida got our chickens." (28). She suffered bruises and had abortion, and was confined for thirty days. Later, her husband returned. He was very weak and some parts of his body were swollen. (29). The certificate of ownership of the carabao was inside a trunk which was lost. When she left her house with her children, without taking anything with her, she left the trunk there. (30). She did not know why her husband was taken to the BC headquarters. (31).

4. Tecla Anota, 38, married, resident of Burauen, Leyte: During the Japanese occupation the accused were under the Japanese with duties to apprehend persons against the Japanese. On July 8, 1944 she saw Ignacio Macantan in the yard of the BC garrison in Burauen; he was tied with his hands on the back, followed by two BC soldiers. (31). He was suspended in mid-air in the upper part of the building. Avila struck him on the breast with the butt of his rifle and with his fists. Ignacio Macantan vomitted blood; he was moaning. The following day he was still suspended; he remained in the garrison for four days, may be he was released on the fourth day. (32). He was not given food. (33).

5. Benito Arana, 25, farmer, resident of San Diego, Burauen, Leyte, brother of Pelagio Arana: Pelagio Arana is dead. (33). Pelagio went to San Diego to get some food on May 25, 1943, but he did not return for three days. He found the body of his brother beside the road in San Diego; it was pointed to him by Ignacio Macantan; it had many wounds. (34). "I later took his bones." (35).

DEFENSE

The witnesses for the defense testified in substance as follows:

1. Gregorio Refuerzo, 61, widower: Conrado Cobalida is his nephew, and Simeon Refuerzo, his son. (36). He has never gone to school and does not know how to write. During the war he was in the mountains in the *sitio* called Lunoyon, Burauen, about 10 to 15 kilometers from San Diego, to which he went in June 1944. (37). It is not true that he went with Conrado Cobalida and some BC soldiers on July 8, 1944 to the house of Ignacio Macantan and asked for the whereabouts of Cirilo Macantan. Ignacio Macantan had a grudge against him because of a carabao stolen by Ignacio and belonging to witness' son. "At dawn of Friday, July 7, 1944, that carabao was tied near our house. The following morning, Saturday, July 8, 1944, the carabao was already missing." Later they discovered that "it was already butchered." (38). It was found about two armlengths from the yard of Ignacio Macantan. "My son went immediately to the town saying that he will file his complaint." "He returned in the afternoon" with BC soldiers. The soldiers took Ignacio Macantan to the town. (39). "The soldiers and my son were able to find carabao meat in one of the corners of the house of Ignacio Macantan and also in the back of the house near the banana plants." The meat was brought to town. "We went to the mayor's office." "He told us not to worry about our carabao because Ignacio Macantan is going to change it with another one as payment. And if Ignacio Macantan does not do so, he will be imprisoned for four years." On Monday, Ignacio Macantan delivered his carabao in payment of the one he had stolen. And so "we asked the mayor to make the necessary papers." (40). The credential of the carabao, Exhibit 1, was delivered at the same time with the carabao. But this carabao "was stolen while we were in the stockade." (41).

2. Conrado Cobalida, 33, married, detainee, one of the accused herein: On Saturday July 8, 1944, he happened to go to the house of Ignacio Macantan because he met Gregorio Refuerzo who told him that the carabao of his (Gregorio's) son, Simeon, was stolen the previous night "I went with them to find if it really was true." "We went in to see the carabao that was butchered. It was butchered in the yard of Ignacio about twenty armlengths from the house. We found in the yard three legs of the carabao and the head * * *." At that time Ignacio was not in the house but he arrived later. (42). The BC soldiers investigated him. The BC soldiers found meat in his house. Ignacio said that he bought it from one Julita. The BC soldiers went around the house, and around the

back of the house, and found some meat and hide of the slaughtered carabao hidden near the banana plants. Trinidad Piko was not investigated nor harmed, but Ignacio Macantan was beaten with a piece of meat because of his denials. (43). The witness was the one who beat him with the meat; Ignacio Macantan was brought, with the meat, to the mayor, Jose Cordero but he was not tied. The meat was brought on a sled. After talking things over in front of the mayor, Ignacio Macantan said that he was willing to pay for the carabao which was butchered. "He promised to pay it back with another carabao." Simeon Refuerzo accepted the proposition, but the carabao was to be delivered on Monday, the tenth, because the carabao of Ignacio Macantan was still with his father-in-law in San Andres. "On Monday, it was brought to town by Ignacio Macantan." (44). He delivered it to Mayor Jose Cordero, who in turn gave it to Simeon Refuerzo; the carabao was a female; it was given merely as a guaranty, to be forfeited if Ignacio should fail to pay. The carabao is the same as that mentioned in the certificate Exhibit I; it was given to Simeon Refuerzo. Exhibit 2, is the note signed by Ignacio Macantan before the Mayor promising to pay for the carabao stolen from Simeon. (45). The carabao of Simeon Refuerzo which was slaughtered was obtained by him from Serapio Rallama, cousin of Dalmacio Rallama. The meat of the slaughtered carabao was sold by Ignacio Macantan, who signed a document for the proceeds of the sale. (46). It is not true that the witness stabbed Pelagio Arana, who had been a lunatic since 1937. At one time Arana "went up the house of a girl and was caught by the parents of the girl and since that time he became crazy." He was caught in the house of Dadoy Sujario. On May 25, 1943 the witness was in the mountains of Lunoyon with his family. He was with his uncle Gregorio Refuerzo and the latter's family. They went there in 1942 and went down in June, 1944. (47). The witness is accused in this case because he beat Ignacio Macantan with a piece of carabao meat. It is not true that he was a member of the "Jutai", or that he had accompanied Japanese patrols in the apprehension of guerrillas. He was a volunteer guard of the guerrilla. It is true that "I killed my uncle but it was because of his very bad behavior." (48). He was acquitted for that killing. He went to the mountains in February, 1942, because he was afraid of the Japanese. (49). When the witness slapped Ignacio Macantan with a piece of meat because he denied having slaughtered the carabao of Simeon, Ignacio "Got angry with me." (53). The witness does not know how to write except his name; he reached the second grade and

can not understand English. (54). Mayor Jose Cordero is dead. (57).

3. Eliodoro Compio, 26, single, detainee: In July, 1944 he was a BC soldier stationed in Burauen. (57). "It was around 8 or 9 o'clock in the morning of Saturday, when the mayor went to the BC headquarters to get two BC soldiers for the arrest of Ignacio Macantan. The order was to arrest and bring him to the office of the mayor for the alleged stealing of the carabao of Simeon Refuerzo." The witness sent BC soldiers Rillador and Millara to arrest Ignacio. (56). On Monday, the tenth, the witness met Ignacio Macantan in the BC headquarters. Ignacio was with the money he received from the sale of the meat of the carabao he had slaughtered. The signature on Exhibit 4 is that of the witness. This Exhibit says that the money to be paid was ₱299.40; the receipt was issued to show that Ignacio Macantan "really killed the carabao." Simeon Refuerzo was present when Exhibit 4 was made. The document was issued because Simeon Refuerzo wanted it understood that it was Ignacio Macantan who received the money. Ignacio Macantan and Simeon Refuerzo went together to the barracks. Ignacio was not there at the time. (58). After the document was made Ignacio Macantan went home. (59).

Gregorio Refuerzo, on re-direct examination, testified that it is not true that he, together with his co-accused and other persons, stabbed Pelagio Arana to death. (60). He denied he was a tuba gatherer; he said he could not climb. (62). Ignacio Macantan pleaded guilty of the stealing before the mayor. (66–67).

Exhibit 1 is a certificate of ownership of a large cattle, No. 9005895, issued in Burauen on January 25, 1937, in the name of Ignacio Macantan.

Exhibit 2 is a promissory note sworn to and subscribed by Ignacio Macantan before Mayor Jose S. Cordero, on July 10, 1944, wherein Ignacio Macantan promised to pay Simeon Refuerzo within three months for a female carabao, containing a *proviso* that, upon his failure to pay the note, Simeon would be entitled to forfeit the credential guaranty.

Exhibit 3 is another affidavit signed by Ignacio Macantan, in the same tenor as Exhibit 2 *Latino lex.*

Exhibit 4 is an affidavit signed by Ignacio Macantan on July 10, 1944 before Detachment Commander Eliodoro Compio, stating that he received ₱299.40 which is the amount he collected when he slaughtered the carabao of Simeon Refuerzo.

Exhibit 5 is a receipt issued July 10, 1944 by the Deputy Provincial Treasurer in favor of Dalmacio Rellama for the amount of ₱0.30 as fee for the slaughter of a carabao.

Exhibit 6 is permit No. 2114727 issued by the Municipal Treasurer, in favor of Dalmacio Rellama on July 10, 1944 authorizing him to slaughter a carabao, and a receipt issued by the same Municipal Treasurer for the sum of ₱10 as slaughter fee under Ordinance No. 7 of Burauen.

After carefully weighing the evidence in the record we have reached the conclusion that there is not enough ground to convict the appellants herein of the crime of treason.

The appellants are accused of having participated in the killing of Pelagio Arana, in the afternoon of May 25, 1943, and also in the arrest and maltreatment of Ignacio Macantan on July 8, 1944, the prosecution relying upon the testimonies given by Ignacio Macantan, Trinidad Piko and Marcelo Piko, the latter two being Ignacio's wife and brother-in-law, respectively. It appears, however, that Ignacio Macantan had a strong motive for purposely testifying against the appellants, because of what had happened between Ignacio and his family, on the one side, and the appellants and his companions, on the other, in July, 1944, and it is only understandable that his wife and brother-in-law should give him all the support that he may need.

According to the evidence, before July 8, 1944 a carabao of Simeon Refuerzo, son of Gregorio, had disappeared, and on that date, a carabao was slaughtered in a yard near the house of Ignacio Macantan. So, Simeon Refuerzo, suspecting Ignacio Macantan to be the author of the theft of his carabao, went to the town to report the matter to the police authorities, and thereafter, accompanied by them, he went to the house of Ignacio Macantan. Both appellants also went to the place. In Ignacio's yard traces of the slaughtered carabao were found. Inside the house of Ignacio Macantan the authorities also found carabao meat. Upon being questioned Ignacio told the police authorities that he bought the meat from one Julita; but his explanation appeared to be suspicious because the meat was still unseparated from the hide. So, the authorities made further investigation in the yard of the house, and at the back thereof near a banana plant they found another quantity of carabao meat. Because of Ignacio's insistent denials, appellant Cobalida slapped him with the carabao meat, which act naturally provoked his anger and put him to shame. Ignacio was brought to town with the carabao meat, which he was made to carry on a sled. Simeon Refuerzo and the appellants also went to the town and there appeared before Mayor Jose Cordero. Unable to further deny the stealing of the carabao belonging to Simeon Refuerzo in view of the evidence in the hands of the police authorities clearly pointing to his guilt, Ignacio agreed to pay Simeon for the stolen and slaughtered carabao, and, as guaranty for its payment, to deliver to him a female ca-

rabao. But since at the time that female carabao was still in the possession of his father-in-law in another place, Ignacio requested that the delivery of said carabao to Simeon be postponed until the following Monday, July 10, 1944.

As a consequence of the amicable settlement, agreed upon by the parties with the intervention of the mayor of Burauen, Ignacio Macantan was authorized to sell the meat of the butchered carabao. The proceeds of the sale amounted to ₱299.40, for which amount he issued the corresponding receipt.

The certificate of ownership of the female carabao was also delivered to the latter and is now attached to the records as one of the exhibits. On the same day, Ignacio signed before Mayor Cordero the corresponding document regarding the promise of Ignacio to deliver the female carabao to Simeon as guaranty for the payment to the latter of that carabao, he had previously stolen and slaughtered.

Ignacio Macantan's allegations that, according to his wife, his carabao was forcibly taken by appellant Gregorio Refuerzo, that his certificate of ownership thereof had disappeared, and that the document he executed before Mayor Cordero was signed by him through duress and torture, are unconvincing and highly incredible. If it is true that the appellants, as contended by Macantan, were members of the "Jutai" and in the service of the Japanese, then it was not necessary for them to secure from Ignacio Macantan any document at all to justify the taking of the latter's carabao. The armed Filipinos, who had been serving as agents, spies, or under-covers in the service of the Japanese during the enemy occupation, were actually—the same as the Japanese,—veritable masters of life and death. If they could take, torture and kill any fellow Filipino, without any ceremony, they could certainly have taken a carabao for the asking. There was no need for any document to simulate justification in the taking.

Having been caught in the commission of a grave offense—that of stealing a large cattle,—heavily punished by law, and having undergone the shame entailed in the whole transaction in which he lost his own carabao to Simeon Refuerzo and had to endure the ignominy of being slapped by Cobalida with the meat of the carabao he had stolen and clandestinely slaughtered, it is not unnatural for Ignacio Macantan to purposely accuse the appellants of having tortured him and even killed Pelagio Arana who, according to the evidence, was a crazy person and not a guerrilla as claimed by Macantan.

Appellants should be acquitted.

PARÁS and BRIONES, *JJ.*:

We concur in the foregoing dissenting opinion.

FERIA, *J.*:

I concur in that the appellants should be acquitted.

Judgment modified.

[January 21, 1949]

In re VICENTE SOTTO, for contempt of court

1. CONTEMPT; POWER TO PUNISH FOR CONTEMPT IS INHERENT IN ALL COURTS OF SUPERIOR JURISDICTION.—That the power to punish for contempt is inherent in all courts of superior jurisdiction independently of any special expression of statute, is a doctrine or principle uniformly accepted and applied by the courts of last resort in the United States, which is applicable in this jurisdiction since our Constitution and courts of justice are patterned after those of that country.
2. ID.; CRITICISM OR COMMENT ON DECISIONS OF SUPREME COURT, EXTENT AND SCOPE OF.—Mere criticism or comment on the correctness or wrongness, soundness or unsoundness of the decision of the court in a pending case made in good faith may be tolerated; because if well founded it may enlighten the court and contribute to the correction of an error if committed; but if it is not well taken and obviously erroneous it should, in no way, influence the court in reversing or modifying its decision.
3. ID.; ID.—To hurl the false charge that this Court has been for the last years committing deliberately "so many blunders and injustices," that is to say, that it has been deciding in favor of one party knowing that the law and justice is on the part of the adverse party and not on the one in whose favor the decision was rendered, would tend necessarily to undermine the confidence of the people in the honesty and integrity of the members of this court, and consequently to lower or degrade the administration of justice.
4. ID.; ID.—The Supreme Court of the Philippines is, under the Constitution, the last bulwark to which the Filipino people may repair to obtain relief for their grievances or protection of their rights when these are trampled upon, and if the people lose their confidence in the honesty and integrity of the members of this court and believe that they can not expect justice therefrom, they might be driven to take the law into their own hands, and disorder and perhaps chaos would be the result.
5. ID.; ATTORNEYS-AT-LAW; DUTIES TOWARD THE SUPREME COURT.—As a member of the bar and an officer of the courts, Attorney V. S., like any other, is in duty bound to uphold the dignity and authority of this court, to which he owes fidelity according to the oath he has taken as such attorney, and not to promote distrust in the administration of justice. Respect to the courts guarantees the stability of other institutions, which without such guaranty would be resting on a very shaky foundation.
6. ID.; CONSTITUTIONAL LAW; FREEDOM OF SPEECH AND OF THE PRESS; MAINTENANCE OF INDEPENDENCE OF THE JUDICIARY.—The constitional guaranty of freedom of speech and the press must be protected to its fullest extent, but license or abuse of liberty of the press and of the citizen should not be confused with

liberty in its true sense. As important as the maintenance of an unmuzzled press and the free exercise of the rights of the citizen, is the maintenance of the independence of the judiciary.

7. ID.; ID.; ID.—The administration of justice and the freedom of the press, though separate and distinct, are equally sacred, and neither should be violated by the other. The press and the courts have correlative rights and duties and should cooperate to uphold the principles of the Constitution and laws, from which the former receives its prerogative and the latter its jurisdiction. The right of legitimate publicity must be scrupulously recognized and care taken at all times to avoid impinging upon it. In a clear case where it is necessary, in order to dispose of judicial business unhampered by publications which reasonably tend to impair the impartiality of verdicts, or otherwise obstruct the administration of justice, this Court will not hesitate to exercise its undoubted power to punish for contempt. This Court must be permitted to proceed with the disposition of its business in an orderly manner free from outside interference obstructive of the constitutional functions. This right will be insisted upon as vital to an impartial court, and, as a last resort, as an individual exercises the right of self-defense, it will act to preserve its existence as an unprejudiced tribunal.

ORIGINAL ACTION in the Supreme Court. Contempt.

The facts are stated in the opinion of the court.

Vicente Sotto in his own behalf.

FERIA, *J.:*

This is a proceeding for contempt of court against the respondent Atty. Vicente Sotto, who was required by this Court on December 7, 1948, to show cause why he should not be punished for contempt of court for having issued a written statement in connection with the decision of this Court in *In re* Angel Parazo for contempt of court, which statement, as published in the *Manila Times* and other daily newspapers of the locality, reads as follows:

"As author of the Press Freedom Law (Republic Act No. 53), interpreted by the Supreme Court in the case of Angel Parazo, reporter of a local daily, who has to suffer 30 days imprisonment, for his refusal to divulge the source of a news published in his paper, I regret to say that our High Tribunal has not only erroneously interpreted said law, but that it is once more putting in evidence the incompetency or narrow mindedness of the majority of its members. In the wake of so many blunders and injustices deliberately committed during these last years, I believe that the only remedy to put an end to so much evil, is to change the members of the Supreme Court. To this effect, I announce that one of the first measures, which I will introduce in the coming congressional sessions, will have as its object the complete reorganization of the Supreme Court. As it is now constituted, the Supreme Court of today constituted a constant peril to liberty and democracy. It need be said loudly, very loudly, so that even the deaf may hear: the Supreme Court of today is a far cry from the impregnable bulwark of Justice of those memorable times of Cayetano Arellano, Victorino Mapa, Manuel Araullo and other learned jurists who were the honor and glory of the Philippine Judiciary."

Upon his request, the respondent was granted ten days more besides the five originally given him to file his answer, and although his answer was filed after the expiration of the period of time given him the said answer was admitted. This Court could have rendered a judgment for contempt after considering his answer, because he does not deny the authenticity of the statement as it has been published. But, in order to give the respondent ample opportunity to defend himself or justify the publication of such libelous statement, the case was set for hearing or oral argument on January 4, the hearing being later postponed to January 10, 1949. As the respondent did not appear at the date set for hearing, the case was submitted for decision.

In his answer, the respondent does not deny having published the above quoted threat and intimidation as well as false and calumnious charges against this Supreme Court. But he therein contends that under section 13, Article VIII of the Constitution, which confers upon this Supreme Court the power to promulgate rules concerning pleading, practice, and procedure, "this Court has no power to impose correctional penalties upon the citizens, and that the Supreme Court can only impose fines and imprisonment by virtue of a law, and a law has to be promulgated by Congress with the approval of the Chief Executive." And he also alleges in his answer that "in the exercise of the freedom of speech guaranteed by the Constitution, the respondent made his statement in the press with the utmost good faith and with no intention of offending any of the majority of the honorable members of this high Tribunal, who, in his opinion, erroneously decided the Parazo case; but he has not attacked, nor intended to attack the honesty or integrity of any one." The other arguments set forth by the respondent in his defenses deserve no consideration.

Rule 64 of the rules promulgated by this Court does not punish as for contempt of court an act which was not punishable as such under the law and the inherent powers of the Court to punish for contempt. The provisions of sections 1 and 3 of said Rule 64 are a mere reproduction of sections 231 and 232 of the old Code of Civil Procedure, Act No. 190, as amended, in connection with the doctrine laid down by this Court on the inherent power of the superior courts to punish for contempt in several cases, among them *In re* Kelly, 35 Phil., 944. That the power to punish for contempt is inherent in all courts of superior jurisdiction independently of any special expression of statute, is a doctrine or principle uniformly accepted and applied by the courts of last resort in the United States, which is applicable in this jurisdiction since our Constitution and courts of justice are patterned after those

of that country. The doctrine or principle as expounded in American Jurisprudence is as follows:

"The power of inflicting punishment upon persons guilty of contempt of court may be regarded as an essential element of judicial authority. It is possessed as a part of the judicial authority granted to courts created by the Constitution of the United States or by the Constitutions of the several states. It is a power said to be inherent in all courts of general jurisdiction, whether they are State or Federal; such power exists in courts of general jurisdiction independently of any special or express grant of statute. In many instances the right of certain courts or tribunals to punish for contempt is expressly bestowed by statute, but such statutory authorization is unnecessary, so far as the courts of general jurisdiction are concerned, and in general adds nothing to their power, although so far as concerns the inferior courts statutory authority may be necessary to empower them to act." (Contempt, 12 Am. Jur., pp. 418, 419.)

In conformity with the principle enunciated in the above quotation from American Jurisprudence, this Court, in *In re* Kelly, held the following:

"The publication of a criticism of a party or of the court to a pending cause, respecting the same, has always been considered as misbehavior, tending to obstruct the administration of justice, and subjects such persons to contempt proceedings. Parties have a constitutional right to have their causes tried fairly in court, by an impartial tribunal, uninfluenced by publications or public clamor. Every citizen has a profound personal interest in the enforcement of the fundamental right to have justice administered by the courts, under the protection and forms of law, free from outside coercion or interference. Any publication, pending a suit, reflecting upon the court, the parties, the officers of the court, the counsel, etc., with reference to the suit, or tending to influence the decision of the controversy, is contempt of court and is punishable. The power to punish for contempt is inherent in all courts. The summary power to commit and punish for contempt tending to obstruct or degrade the administration of justice, as inherent in courts as essential to the execution of their powers and to the maintenance of their authority is a part of the law of the land." (*In re* Kelly, 35 Phil., 944, 945.)

Mere criticism or comment on the correctness or wrongness, soundness or unsoundness of the decision of the court in a pending case made in good faith may be tolerated; because if well founded it may enlighten the court and contribute to the correction of an error if committed; but if it is not well taken and obviously erroneous it should, in no way, influence the court in reversing or modifying its decision. Had the respondent in the present case limited himself to a statement that our decision is wrong or that our construction of the intention of the law is not correct, because it is different from what he, as proponent of the original bill which became a law had intended, his criticism might in that case be tolerated, for it could not in any way influence the final disposition of the Parazo case by the court; inasmuch as it is of judicial notice that the bill presented by the respondent was amended by both

houses of Congress, and the clause "unless the court finds that such revelation is demanded by the interest of the State" was added or inserted; and that, as the Act was passed by Congress and not by any particular member respondent must be the one to be determined by this Court in applying said Act.
thereof, the intention of Congress and not that of the

But in the above-quoted written statement which he caused to be published in the press, the respondent does not merely criticize or comment on the decision of the Parazo case, which was then and still is pending reconsideration by this Court upon petition of Angel Parazo. He not only intends to intimidate the members of this Court with the presentation of a bill in the next Congress, of which he is one of the members, reorganizing the Supreme Court and reducing the members of Justices from eleven to seven, so as to change the members of this Court which decided the Parazo case, who according to his statement, are incompetent and narrow minded, in order to influence the final decision of said case by this Court, and thus embarrass or obstruct the administration of justice. But the respondent also attacks the honesty and integrity of this Court for the apparent purpose of bringing the Justices of this Court into disrepute and degrading the administration of justice, for in his above-quoted statement he says:

"In the wake of so many blunders and injustices deliberately committed during these last years, I believe that the only remedy to put an end to so much evil, is to change the members of the Supreme Court. To this effect, I announce that one of the first measures, which I will introduce in the coming congressional sessions, will have as its object the complete reorganization of the Supreme Court. As it is now the Supreme Court of today constitutes a constant peril to liberty and democracy."

To hurl the false charge that this Court has been for the last years committing deliberately "so many blunders and injustices," that is to say, that it has been deciding in favor of one party knowing that the law and justice is on the part of the adverse party and not on the one in whose favor the decision was rendered, in many cases decided during the last years, would tend necessarily to undermine the confidence of the people in the honesty and integrity of the members of this court, and consequently to lower or degrade the administration of justice by this Court. The Supreme Court of the Philippines is, under the Constitution, the last bulwark to which the Filipino people may repair to obtain relief for their grievances or protection of their rights when these are trampled upon, and if the people lose their confidence in the honesty and integrity of the members of this Court and believe that they cannot expect justice therefrom, they might be driven

to take the law into their own hands, and disorder and perhaps chaos might be the result. As a member of the bar and an officer of the courts, Atty. Vicente Sotto, like any other, is in duty bound to uphold the dignity and authority of this Court, to which he owes fidelity according to the oath he has taken as such attorney, and not to promote distrust in the administration of justice. Respect to the courts guarantees the stability of other institutions, which without such guaranty would be resting on a very shaky foundation.

Respondent's assertion in his answer that "he made his statement in the press with the utmost good faith and without intention of offending any of the majority of the honorable members of this high Tribunal," if true may mitigate but not exempt him from liability for contempt of court; but it is belied by his acts and statements during the pendency of this proceeding. The respondent in his petition of December 11, alleges that Justice Gregorio Perfecto is the principal promoter of this proceeding for contempt, conveying thereby the idea that this Court acted in the case through the instigation of Mr. Justice Perfecto.

It is true that the constitutional guaranty of freedom of speech and the press must be protected to its fullest extent, but license or abuse of liberty of the press and of the citizen should not be confused with liberty in its true sense. As important as the maintenance of an unmuzzled press and the free exercise of the rights of the citizen, is the maintenance of the independence of the judiciary. As Judge Holmes very appropriately said in U. S. *vs.* Sullens (1929), 36 Fed. (2nd), 230, 238, 239: "The administration of justice and the freedom of the press, though separate and distinct, are equally sacred, and neither should be violated by the other. The press and the courts have correlative rights and duties and should cooperate to uphold the principles of the Constitution and laws, from which the former receives its prerogative and the latter its jurisdiction. The right of legitimate publicity must be scrupulously recognized and care taken at all times to avoid impinging upon it. In a clear case where it is necessary, in order to dispose of judicial business unhampered by publications which reasonably tend to impair the impartiality of verdicts, or otherwise obstruct the administration of justice, this court will not hesitate to exercise its undoubted power to punish for contempt. This Court must be permitted to proceed with the disposition of its business in an orderly manner free from outside interference obstructive of its constitutional functions. This right will be insisted upon as vital to an impartial court, and, as a last resort, as an individual exercises the right of self-defense, it will act to preserve its existence as an unprejudiced tribunal. * * *"

It is also well settled that an attorney as an officer of the court is under special obligation to be respectful in his conduct and communication to the courts, he may be removed from office or stricken from the roll of attorneys as being guilty of flagrant misconduct (17 L. R. A. [N. S.], 586, 594).

In view of all the foregoing, we find the respondent Atty. Vicente Sotto guilty of contempt of this Court by virtue of the above-quoted publication, and he is hereby sentenced to pay, within the period of fifteen days from the promulgation of this judgment, a fine of ₱1,000, with subsidiary imprisonment in case of insolvency.

The respondent is also hereby required to appear, within the same period, and show cause to this Court why he should not be disbarred from practicing as an attorney-at-law in any of the courts of this Republic, for said publication and the following statements made by him during the pendency of the case against Angel Parazo for contempt of court.

In his statement to the press as published in the *Manila Times* in its issue of December 9, 1948, the respondent said: "The Supreme Court can send me to jail, but it cannot close my mouth;" and in his other statement published on December 10, 1948, in the same paper, he stated among others: "It is not the imprisonment that is degrading, but the cause of the imprisonment." In his Rizal day speech at the Abellana High School in Cebu, published on January 3, 1949, in the *Manila Bulletin,* the respondent said that "there was more freedom of speech when American Justices sat in the Tribunal than now when it is composed of our countrymen;" reiterated that "even if it succeeds in placing him behind bars, the court can not close his mouth," and added: "I would consider imprisonment a precious heritage to leave for those who would follow me because the cause is noble and lofty." And the *Manila Chronicle* of January 5 published the statement of the respondent in Cebu to the effect that this Court "acted with malice" in citing him to appear before this Court on January 4 when "the members of this Court know that I came here on vacation." In all said statements the respondent misrepresents to the public the cause of the charge against him for contempt of court. He says that the cause is for criticizing the decision of this Court in said Parazo case in defense of the freedom of the press, when in truth and in fact he is charged with intending to interfere and influence the final disposition of said case through intimidation and false accusations against this Supreme Court. So ordered.

Moran, C. J., Parás, Pablo, Perfecto, Bengzon, Briones, Tuason, Montemayor, and *Reyes, JJ.,* concur.

PERFECTO, *J.*, concurring:

Respondent published in the Manila newspapers of Sunday, December 5, 1948, a written statement in relation with the decision rendered by this Court sentencing Angel Parazo to 30 days imprisonment for contempt.

On December 7, 1948, considering the statement as "intended not only to intimidate the members of this Court or influence the final disposition of said (Parazo) case, but also to degrade and villify the administration of justice," this Court adopted a resolution ordering respondent to show cause within five days why he should not be punished for contempt, "without prejudice to taking further action against him as attorney."

Alleging to be suffering from myologenous leukemia, with moderately severe anemia, and that his physician had advised him to have "absolute rest and to avoid any form of mental and physical strain for a few weeks," respondent prayed for a 15-day extension to file his answer. He was granted a 10-day extension.

In the resolution of December 13, 1948, granting said extension, this Court branded as false respondent's allegations to the effect that he had formal charges pending in this Court against Mr. Justice Perfecto and that the latter is the "moving spirit" of these contempt proceedings.

Two days after the expiration of the 10-day extension granted to him, respondent filed his answer. The belated filing of said answer was overlooked by this Court in order not to deprive respondent of the benefits of his answer. Filed out of time, due to his unexplained fault, it could legally have been rejected.

In said answer, dated December 24, 1948, respondent repeated one of his allegations which, in the resolution of December 13, 1948, this Court had already declared to be false.

Respondent has not denied that he is the author of the statement for which he has been summoned to our bar for contempt and he has not denied the correctness of the text published in the *Manila Chronicle* and other daily newspapers and which is reproduced in the resolution of this Court of December 7, 1948.

In his statement, respondent does not limit himself to saying that this Tribunal has erroneously interpreted Republic Act No. 53, but alleges that said erroneous interpretation "is once more putting in evidence the incompetency or narrow-mindedness of the majority of its members," coupled with this sweeping and calumnious accusation:

"In the wake of so many blunders and injustices deliberately committed during these last years, I believe that the only remedy to put an end to so much evil, is to change the members of the Supreme Court."

To fittingly crown this dastard imputation of *deliberately* committing blunders and injustices, respondent would bully the members of this Court, by making the following intimidating announcement:

"To this effect, I announce that one of the first measures, which I will introduce in the coming congressional sessions, will have as its object the complete reorganization of the Supreme Court."

There are other rhetorical passages in respondent's statement, aimed to emphasize the nuclear ideas of the statement, to the effect that the majority of the members of the Supreme Court are incompetent and narrow-minded and guilty of "so many blunders and injustices deliberately committed" and that the author will introduce in the coming congressional sessions a measure "to change the members of the Supreme Court" and to effect a "complete reorganization of the Supreme Court."

Among such maximizing expressions intended to stress the main ideas and purposes of the statement are the following:

1. "As it is now constituted, the Supreme Court of today constitutes a constant peril to liberty and democracy."
2. "It need be said loudly, very loudly so that even the deaf may hear: The Supreme Court of today is a far cry from the impregnable bulwark of Justice of those memorable times of Cayetano Arellano, Victorino Mapa, Manuel Araullo and other learned jurists who were the glory of the Philippine judiciary."
3. "The reporter, who is erroneously convicted of contempt and unjustly sentenced to 30 days imprisonment by the Supreme Court, should be immediately and spontaneously pardoned by the Executive Power, to serve as a lesson in law to the majority of the members of that High Tribunal."
4. "That sentence is intolerable, and should be protested by all newspapers throughout the country, under the cry of 'The press demands better qualified justices for the Supreme Court.'"

There can be no question that respondent knowingly published false imputations against the members of this Court. He accused them of such depravity as to have committed "blunders and injustices deliberately." He has maliciously branded them to be incompetent, narrow-minded, perpetrators of evil, "a constant peril to liberty and democracy," to be the opposite of those who were the honor and glory of the Philippine judiciary, to be needing a lesson in law, to be rendering an intolerable sentence, to be needing replacement by better qualified justices.

Respondent has not presented any evidence or offered any to support his slanderous imputations, and no single word can be found in his answer showing that he ever believed that the imputations are based on fact.

Respondent appears to belong to the class of individuals who have no compunction to resort to falsehood or falsehoods. The record of this case indicates that the practice of falsehoods seems to be habitual in respondent, and this

is proved when he reiterated in his answer one of his allegations in a previous petition which were pronounced by this Court to be false in its resolution of December 3, 1948.

More than thirty years ago, using the words of respondent himself, in "those memorable times of Cayetano Arellano, Victorino Mapa, and Manuel Araullo and other learned jurists who were the glory of the Philippine judiciary" and when it was the "impregnable bulwark of Justice," the Supreme Court pronounced respondent guilty of falsehoods three times: first, in a case in which he was sentenced to 4 years and 2 months of *prisión correccional* for criminally abducting Aquilina Vasquez, a girl less than 18 years of age, and to pay her a dowry of ₱500 and to support the offspring of his relations with her (U. S. *vs.* Sotto, 9 Phil., 231); second, in a sentence of disbarment as a blackmailer (*In re* Sotto, 38 Phil., 532); and third, in a prison sentence for false libel (U. S. *vs.* Sotto, 38 Phil., 666). The first and the last sentences bear the signature of Chief Justice Cayetano Arellano himself.

In the first case the Supreme Court found that on July 29, 1906, Vicente Sotto wrote a letter to Aquilina Vasquez, protesting his love for her and urging her to leave her house and go with him; on the afternoon of August 1, 1906, Sotto made an arrangement with Luis Crisologo for the renting of his house since that night when Sotto went with Aquilina into the room of the house, where she passed the night; Sotto had told Crisologo that he wanted the house for a forestry ranger who was just arriving from Bohol; Sotto did not leave the room until the middle of the night; Aquilina transferred to a house in Sambag where Sotto brought various housekeeping utensils; during the following days and nights Aquilina was visited by respondent.

On August 10, 1906, a complaint was filed against Vicente Sotto and Pio Datan, charging them with the crime of *rapto*. As a defense, respondent offered evidence to show that on August 5, 1906, a legal marriage was celebrated between Aquilina and the accused Pio Datan, Sotto's washerman and accomplice in crime. Upon the evidence, the Supreme Court pronounced the celebration of the alleged marriage to be false. The certificate of marriage offered as evidence in support of the claim that the marriage took place had been declared a forgery.

It is not necessary to give the details of the whole disgusting affair, wherein the revolting and sinister nature of an individual is pictured in bold relief with some of its ugliest features. The more than 4 years of imprisonment imposed upon the accused did not reform him. It only served to emphasize the beginning of a long career

of falsehoods and slanders already spanning more than 40 years, soon nearing half of a century.

Respondent also chose not to deny his intimidating announcement to introduce in the coming sessions of Congress, among the first measures, one for the change of the members of the Supreme Court and for the latter's complete reorganization.

He has not explained or justified why he has to intimidate the members of the Supreme Court with change and reorganization, and why, to make the intimidation more dreadful, he had to announce the horrible course of subverting and trampling down the Constitution, as all who can read and understand the fundamental law know that it is beyond the powers of Congress to reorganize and change the membership of the Supreme Court.

Because the announcement is highly subversive, being aimed at shaking the very foundations of this Republic, it could have been no less terrible than for the respondent to have announced an intention to attain his purposes by resorting to open rebellion. The fact that respondent is a lawyer and a senator aggravates his flaunted purpose to assault the very Constitution he has sworn to obey and defend.

We have devoted considerable time to respondent's answer.

As first defense, respondent alleges that he made the written press statement, not as a lawyer or as a private citizen, but as a senator. He avers that a senator should have ample liberty to discuss public affairs and should not be annoyed with contempt proceedings.

No law or valid authority has been invoked in support of the theory, unless we could countenance a fictitious maxim that respondent is the sovereign. The theory lacks even the merit of novelty. Long before the claim of respondent that, because he is a senator, he is above the law, Mussolini, Hitler and all the tyrants and dictators who preceded them since the dawn of history had always claimed that they were above the law and acted as if they were really so. Unfortunately for respondent, senators are creatures of the Constitution and the Constitution makes them amenable to law.

As a second defense, respondent alleges that, not having appeared either as attorney or a witness in the Parazo case, he cannot be held either for direct or for indirect contempt.

The defense is based on a stark ignorance of the law on the subject.

Respondent alleges, as third defense, that he made his statement with "utmost good faith," with "no intention of offending any of the majority of the honorable members

of the High Tribunal," and that he has not attacked nor intended to attack the honesty or integrity of any one.

This allegation lacks sincerity in view of his imputation, among several others equally false and calumnious, that the majority members of the Supreme Court have committed "many blunders and injustices deliberately." The slanderous imputation can only be attributed to bad faith.

As another defense, respondent questions the validity of the penal provisions of Rule 64, implying that said penalties are not procedural in nature, and invoking the provisions of section 13 of Article VIII of the Constitution, limiting the rule-making power of the Supreme Court to matters of pleading, practice, and procedure in courts, and to the admission to the practice of law.

Respondent's contention can be easily disposed of by quoting the following provisions of Act No. 190:

"SEC. 231. *What Contempts of Court may be Punished Summarily.*—A Court of First Instance or a judge of such court at chambers, may punish summarily, by fine not exceeding two hundred pesos, or by imprisonment not exceeding ten days, or both, a person guilty of misbehavior in the presence of or so near the court or judge as to obstruct the administration of justice, including the refusal of a person present in court to be sworn as a witness or to answer as a witness when lawfully required.

"SEC. 232. *What Other Acts are Contempts of Court.*—A person guilty of any of the following acts may be punished as for contempt:

"1. Disobedience of or resistance to a lawful writ, process, order, judgment, or command of a court, or injunction granted by a court or judge;

"2. Misbehavior of an officer of the court in the performance of his official duties, or in his official transactions;

"3. A failure to obey a subpœna duly served;

"4. The rescue, or attempted rescue, of a person or property in the custody of an officer by virtue of an order or process of the court held by him.

"5. The person defeated in a civil action concerning the ownership or possession of real estate who, after being evicted by the sheriff from the realty under litigation in compliance with the judge ment rendered, shall enter or attempt to enter upon the same for the purpose of executing acts of ownership or possession or who shall in any manner disturb possession by the person whom the sheriff placed in possession of said realty.

* * * * * * *

"SEC. 235. *Trial of the Charge.*—Upon the day fixed for the trial, the court shall proceed to investigate the charge and shall hear any answer or testimony which the accused may make or offer.

"SEC. 236. *Punishment if Found Guilty.*—The court shall then determine whether the accused is guilty of the contempt charged; and, if it be adjudged that he is guilty, he may be fined not exceeding one thousand pesos, or imprisoned not more than six months, or both. If the contempt consists in the violation of an injunction, the person guilty of such contempt may also be ordered to make complete restitution to the party injured by such violation.'

Therefore, even on the false hypothesis that penalties for contempt are not procedural in nature, courts of justice may impose said penalties, if not under Rule 64, under the provisions of Act No. 190.

The power to punish for contempt is inherent in courts of justice. It springs from the very nature of their functions. Without such power, courts of justice would be unable to perform effectively their functions. They function by orders. Every decision is a command. The power to punish disobedience to command is essential to make the commands effective.

Respondent is in error in maintaining that the Supreme Court has no power to enact Rule 64. He is correct in calling it judicial legislation although he fails to remember that judicial legislation in matters of judicial practice and procedure is expressly authorized by section 13 of Article VIII of the Constitution.

As a last defense, respondent invokes the constitutional freedom of the press, which includes the right to criticize judges in court proceedings.

Respondent, undoubtedly, misses the point, and his citations about said freedom, with which we fully agree, have absolutely no bearing on the question involved in these proceedings.

No one, and the members of the Supreme Court would be the last to do so, has ever denied respondent the freedom of the press and his freedom to criticize our proceedings, this Court and its members. Respondent's statement goes much further than mere criticism of our decision and the majority members of this Court. The statement is an attempt to interfere with the administration of justice, to miscarry and defeat justice, by trammelling the freedom of action of the members of the Supreme Court, by bullying them with the menace of change, reorganization, and removal, upon the false accusation that they have been committing "blunders and injustices deliberately," and that menacing action constitutes a flagrant violation of the Constitution. Such a thing is not covered by the freedom of the press or by the freedom to criticize judges and court proceedings, as no one in his senses has ever conceived that such freedoms include any form of expressed gangsterism, whether oral or written.

The freedom of the press is not involved in these proceedings. To assert otherwise is to mislead. What is at stake in these proceedings is the integrity of our system of administration of justice and the independence of the Supreme Court and its freedom from any outside interference intended to obstruct it or to unduly sway it one way or another.

The freedom of the press is one of the causes which we have always endeared. The repeated prosecutions and

persecutions we have endured in the past for its sake—we have been hailed to court eight times,—are conclusive evidence of the firm stand we have taken as defender of such freedom. It can be seen from official records that every acquittal handed down to us by the Supreme Court had been a new step forward and a new triumph for the freedom of the press. (U. S. *vs.* Perfecto, 42 Phil., 113, Sept. 9, 1921; U. S. *vs.* Perfecto, 43 Phil., 58, March 4, 1922; U. S. *vs.* Perfecto, 43 Phil., 225, March 23, 1922; People *vs.* Perfecto, 43 Phil., 887, Oct. 4, 1922.) That stand has remained the same, as can be shown in our written opinion in another contempt proceedings in the Ben Brillantes case, which failed to attract public attention at the time.

Among the facts which we cannot ignore in deciding this case, are the following:

1. That this is not the first time respondent has been brought to a court of justice, for a grave misbehavior and for perpetrating stark falsehoods. In a decision by the Supreme Court on September 6, 1918, respondent was removed from the office of attorney-at-law and incapacitated from exercising the legal profession. He was found guilty of:

(*a*) Lack of fidelity to clients;

(*b*) Blackmailing, by abusing his position as director of a newspaper whose columns he used to blacken the reputation of those who refused to yield to demands made by him in his business as lawyer;

(*c*) Publication of malicious and unjustifiable insinuations against the integrity of a judge who had fined him for the crime of libel;

(*d*) Giving false testimony or perjury. (38 Phil., 532.)

2. On September 24, 1918, the Supreme Court sentenced respondent to imprisonment for libel, for besmirching the honesty of three private individuals, Lope K. Santos, Jose Turiano Santiago and Hermenegildo Cruz with false charges. (38 Phil., 666.)

3. After having been cited for contempt in these proceedings, respondent, in order to pose as a martyr for the freedom of the press, waged a campaign of vituperation against the Supreme Court. He made repeated press statements and delivered speeches in his home province to show that he cannot expect justice from the Supreme Court, that the Supreme Court will imprison him, that he will be imprisoned for the sake of the freedom of the press, thereby posing as a false martyr for it.

4. In his persecutory obsession, respondent would make all believe that, contrary to fact, the writer of this opinion is the moving spirit behind these contempt proceedings

and that the Supreme Court is acting merely as a tool. Apparently, respondent was irked by his failure to sit even for a single moment in the Senate Electoral Tribunal, because of our objection. The publicity given to our objection has exposed the illegality of respondent's designation made by the Senate President as, under section 11 of Article VI of the Constitution, the power to choose Senators for the Electoral Tribunal belongs to the Senate, and not to its presiding officer. At the bar of public opinion, the Senate President and respondent appeared either to be ignorant of the Constitution or to be bent on flagrantly violating it.

5. Respondent is the author of the bill which was enacted into Republic Act No. 53, but the purposes of his bill were thwarted by an amendment introduced by the Senate, denying the privilege granted therein when in conflict with the interest of the State. Respondent's bill was for an absolute privilege. Because the majority decision of the Supreme Court has made his failure patent, respondent took occasion to give vent to his grudge against the Supreme Court, wherein, of the 15 cases he had since liberation, he lost all except three, as can be seen in the records of the following cases:

L–23, Filomena Domiit Cabiling *vs.* The Prison Officer of the Military Prison of Quezon City	LOST
L–212, Narcisa de la Fuente, et al. *vs.* Fernando Jugo, etc. et al.	WON
L–247, Monsig. Canilo Diel *vs.* Felix Martinez, etc. et al.	WON
L–301, In the matter of the petition of Carlos Palanca to be admitted a Citizen of the Philippines	LOST (As *amicus curiæ*
L–307, Eufemia Evangelista et al. *vs.* Rafael Maninang	LOST
L–599, Amalia Rodriguez *vs.* Pio E. Valencia et al.	LOST
L–1201, Vicente Sotto *vs.* Tribunal del Pueblo et al.	LOST
L–1287, Ong Sit *vs.* Edmundo Piccio et al.	LOST
L–1365, Vitaliano Jurado *vs.* Marcelo Flores	LOST
L–1509, Tagakotta Sotto *vs.* Francisco Enage	LOST
L–1510, Bernarda Ybañez de Sabido et al. *vs.* Juan V. Borromeo et al.	LOST
L–1938, Vicente Sotto *vs.* Crisanto Aragon et al.	WON
L–1961, The People of the Philippines *vs.* Antonio de los Reyes	LOST
L–2041, Quirico Abeto *vs.* Sotero Rodas	LOST
L–2370, Voltaire Sotto *vs.* Rafael Dinglasan et al.	LOST

Upon the records of his previous cases in 1918, and of these proceedings, it is inevitable to conclude that we have before us the case of an individual who has lowered himself to unfathomable depths of moral depravity,—a despicable habitual liar, unscrupulous vilifier and slanderer, unrepented blackguard and blackmailer, shameful and shameless libeler, unmindful of the principles of decency as all hardened criminals. He is a disgrace to the human species. He is a shame to the Senate.

Aghast at the baseness of his character, we felt, at first blush, the impulse of acquitting him, as his contemptible conduct, culminating in the press statement in question, seemed compatible only with the complete irresponsibility of schizophrenics, idiots, or those suffering from doddery.

His repeated press releases in which he tried to focus public attention to the most harmless part of his statement, wherein he accuses the majority of the Supreme Court of incompetency or narrow-mindedness, have shown, however, that respondent is not completely devoid of personal responsibility, as he is aware that he has no possible defense for alleging that the members of the Supreme Court have committed "blunders and injustices deliberately," for which reason he has widely publicized his expectation that he will be sentenced in this case to imprisonment, a penalty that, by his repeated public utterances, he himself gives the impression that he is convinced he deserves.

Verily he deserves to be sentenced to six months imprisonment, the maximum allowed by Rule 64, and such penalty would not be heavy enough because of the attendance of several aggravating circumstances; namely, the falsehoods he resorted to in this case, his insolence after he was cited for contempt, the fact that he is a lawyer and a Senator, the fact that he has already been sentenced to imprisonment for falsely libeling three private individuals, the fact that more than 30 years ago he had been disbarred as a blackmailer, the fact that more than 40 years ago he was sentenced to be jailed for more than 4 years as an abductor. The majority of this Court has sentenced a young and humble newspaperman to 30 days imprisonment only for refusing to answer a question. The offense committed by respondent is much graver than a mere refusal to answer a question.

We concur, however, in the decision imposing upon respondent a fine of ₱1,000 with subsidiary imprisonment and ordering him to show cause why he should not be completely deprived of the privilege of practicing the profession of a lawyer. High reasons of humanity restrained us from sending respondent to prison, unless he should voluntarily choose to enter therein, instead of paying the fine. He is old and, according to his physician, suffering from myologenous leukemia with moderately severe anemia requiring absolute rest and avoidance of any form of mental and physical strain, and we do not wish to endanger respondent's life by sending him to prison, and thus causing him the mental and physical strains which his physician advised him to avoid. Although the continued existence of respondent is more harmful than beneficial to our Republic and to human society, we have to be consistent with our abidance by the injunction of the Sermon on the Mount: "Thou shalt not kill." (Matth. Chapter 5, para-

graph 21.) Although their segregation from the society of decent men is advisable because of the dangers of corruptive contamination, even the lives of moral lepers have to be spared. After all, the heaviest punishment for an evildoer is the inherent stigma of shame of his evil-doings.

Let it be clear that we are not punishing respondent because we want to curtail his freedom of the press, but because of his wanton interference in the independence of the Supreme Court, his overt attempt to deprive us of our freedom of judgment in a pending case, his swashbuckling bravado to intimidate the members of this Court to sway their decision in favor of a litigant.

The freedom of the press is not in the least involved in these proceedings. The offensive statement has not been published by respondent as a newspaperman, editor or journalist. He does not appear to be a member of the staff of any one of the newspapers which published his statement. We did not even molest said newspapers. Their editors have not been cited for contempt. We did not interfere with their freedom to publish the scurrilous statement.

If respondent has not attempted by his browbeating to undermine and overthrow the very foundations of our judicial system and actually sought to defeat and miscarry the administration of justice in a pending litigation, we would certainly have abstained from summoning him merely for criticising, insulting and slandering the Members of the Court. After all his reputation for lack of veracity, malice, and unscrupulosity is well-known in official records branding him with the indelible stigma of infamy.

His blatant posing, therefore, in this case as a martyr for the freedom of the press, as part of his systematic campaign of falsehoods and slanders directed against the Supreme Court, is an imposture that only ignorants, blockheads and other mental pachyderms can swallow.

It takes too much effrontery for such a character as respondent to pose as a martyr and no less than for the sake of a sacred cause, the freedom of the press, which no one has so much dishonored with his blackmailing practices and by his long list of cases in the courts of justice, starting as far back as 1901. (Julia *vs.* Sotto, 2 Phil., 247; U. S. *vs.* Sotto, 9 Phil., 231; *In re* Sotto, 38 Phil., 532; U. S. *vs.* Sotto, 38 Phil., 666; U. S. *vs.* Sotto R. G. No. 201; U. S. *vs.* Sotto, R. G. No. 11067; U. S. *vs.* Sotto, R. G. No. 14284; U. S. *vs.* Vicente Sotto, R. G. No. 16004; People *vs.* Sotto, R. G. No. 23643.)

Respondent belongs to that gang of unprincipled politicians headed by a Senate President who trampled down the popular will by the arbitrary and unconstitutional suspen-

sion of Senators Vera, Diokno and Romero (Vera *vs.* Avelino, L–543), who issued the false certification as to the voting of the congressional resolution regarding the infamous Parity Amendment, thus perpetrating falsification of public document (Mabanag *vs.* Lopez Vito, L–1123), who muzzled the people by ordering, in usurpation of executive powers, mayors all over the country not to allow the holding of public meetings which the opposition had organized to denounce the frauds in the elections of November 11, 1947 (Cipriano C. Primicias, as General Campaign Manager of the Coalesced Minority Parties *vs.* Valeriano E. Fugoso, as Mayor of the City of Manila, L–1800), who wantonly violated the Constitution by interfering with the management of the funds of the Senate Electoral Tribunal (Suanes *vs.* The Chief Accountant of the Senate, L–2460), who, again in violation of the fundamental law, usurped the exclusive powers of the Senate when he designated respondent to sit in the Senate Electoral Tribunal, and who crowned his misdeeds by enunciating on Saturday, January 15, 1949, the most immoral political philosophy—that of open toleration of rackets, graft and corruption in public office.

According to Rizal, the victims immolated in the altar of great ideals, to be acceptable, have to be noble, spotless and pure. They should, therefore, be as noble and pure as Socrates, Christ, Joan of Arc, Lincoln, Bonifacio, Mabini, Gandhi and Rizal himself. Then and only then will martyrdom be hallowed and glorified because it is worthy of the effulgent grandeur of sacred ideals. "Hate never produces anything but monsters and crime criminals! Love alone realizes wonderful works, virtue alone can save! Redemption presupposes virtue, virtue sacrifice, and sacrifice love! Pure and spotless must the victim be that the sacrifice may be acceptable!" (El Filibusterismo.)

Respondent complains in his answer that he is not accorded fair dealing because the writer of this opinion has not abstained from taking part in this case. The complaint is absolutely groundless. It is based on two false premises, concocted by respondent to make it appear that he is a victim of persecution, and on a conclusion, also false, because based on the two false premises.

Respondent alleges that there are pending in the Supreme Court certain charges he filed against the writer and that the undersigned is the "moving spirit" behind these proceedings. Both trump-up allegations are false, and the Supreme Court has declared it to be so in its resolution of December 13, 1948.

The records of the Supreme Court show that no such charges have been filed. Respondent ought to know, if he can read and understand the Constitution, that if he has any charge to file against a Justice of the Supreme

Court to seek his ouster, he has to file it with the House of Representatives, the only agency authorized by the fundamental law to institute impeachment proceedings.

If the House of Representatives should institute it, the respondent will have the opportunity to sit in judgment as a senator as, under the Constitution, the Senate is the sole tribunal on cases of impeachment.

No Justice with full sense of responsibility should commit a dereliction of official duty by inhibiting himself in a case upon imaginary or fabricated grounds. The members of the Supreme Court are not such moral weaklings as to easily yield to dishonest appeals to a false sense of delicacy. A cowardly surrender to groundless challenges of unscrupulous parties is unbecoming to a judge, and much more to a Justice of the Highest Tribunal of the Republic.

It is true that, after respondent had failed to sit in the Senate Electoral Tribunal, because we objected to the designation issued to him by Senate President Avelino on constitutional grounds, he requested the Chief Justice to relieve us as one of the members of the Senate Electoral Tribunal, and respondent would make it appear that for his move we are prejudiced against him.

He is absolutely wrong. His request to the Chief Justice did not disturb us the least. The Constitution does not grant anyone the power to oust, replace, or dismiss any member of the Senate Electoral Tribunal, judicial or senatorial, during his term of office in the Tribunal. Although an illegal substitution has been made once in the case of Senators Sebastian and Cuenco, such precedent did not make constitutional what is unconstitutional, and the Chief Justice of the Supreme Court has made clear his stand to uphold the Constitution by stating it in black and white in the decision he penned in the Suanes case, L–2460. Respondent's failure was so obvious for us to mind his move.

After all, why should we waste time and energy by entertaining any kind of prejudice against respondent, when there are so many great minds, beautiful characters, and wonderful personalities that are demanding our attention and whose spiritual companionship makes life enjoyable?

If we had entertained any prejudice against respondent, we would have meted out to him the penalty of imprisonment which he well deserves, without minding the ill consequences it may entail to his health and life and without heeding the promptings of our pity and sense of humanity. Fortunately, very many years have already elapsed since we acquired the state of mind with which we can judge things and persons with an open and free conscience, truly emancipated from the shackles of any prejudice. The hateful events during the Japanese occupa-

tion were the best mycelium for spawning and the choicest fertilizers for growing prejudices against Generals Yamashita and Homma, to the extent of justifying any measure or action that would spell their doom. Immediate members of our family and ourselves endured agonizing sufferings and some of our near relatives were liquidated under their regime. But when Yamashita and Homma came to this Supreme Court, seeking remedy against the absurdly iniquitous procedure followed by the military commissions which tried them, so iniquitous that it closed to the Japanese generals all chances of fair trial, no scintilla of prejudice precluded us from casting the lone vote intended to give them the remedy and justice they sought for, notwithstanding the fact that Yamashita and Homma appeared, in the general concept of our people, to be veritable monsters of cruelty and murder. Certainly, respondent would not pretend having given us, if ever, stronger grounds for prejudice than Yamashita and Homma, or that he is worse than both of them.

We are not to end this opinion without expressing our steadfast addiction to the following propositions:

1. The independence of the judiciary from outside interference or obstruction is essential to the effectivity of its functions so that it can afford protection to fundamental rights, including the freedom of the press, against encroachments and illegal assaults.

2. The freedom of the press includes the right to comment on pending judicial cases and the right to criticize the public and private life of all public officers, without any exception.

3. The freedom of the press does not, however, safeguard any publication intended to bully courts and judges in order to sway their judgments on pending cases, and such interference and obstruction should be promptly and drastically checked for the sake of an effective administration of justice.

4. Tribunals should be prompt in stopping the threatening and browbeating tactics of swaggering political ruffians and cutthroats bent on thwarting the scale of justice, as the opposing alternative to such a stern judicial attitude is surrendered to judicial anarchy.

5. Courts of justice annealed to face and ever ready to deal vigorously with attempts to turn them into puppets of domineering would-be dictators are essential in maintaining the reign of law and guaranteeing the existence of an orderly society.

This opinion has been written to modify and clarify our stand in concurring in the decision.

Respondent found guilty of contempt and fined.

[No. L-365. January 21, 1949]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* ANTONIA RACAZA, defendant and appellant

1. CRIMINAL LAW; TREASON; PLEA OF GUILTY MUST BE UNCONDITIONAL.—As to the counts which the defendant denied or qualified, his plea does not possess the requiremcnt of a plea and should have been rejected and the parties directed to introduce their evidence. A plea of guilty must be unconditional save to explain mitigating circumstances. The defendant's responsibility on these counts therefore have to be gauged by the prosecution's evidence and defendant's admissions.
2. ID.; ID.; EVIDENT PREMEDITATION, SUPERIOR STRENGTH AND TREACHERY ARE NOT AGGRAVATING CIRCUMSTANCES.—The circumstances of evident premeditation, superior strength and treachery are, by their nature, inherent in the offense of treason and may not be taken to aggravate the penalty. Adherence and the giving of aid and comfort to the enemy is, in many cases, as in this, a long, continued process requiring, for the successful consummation of the traitor's purpose, fixed, reflective and persistent determination and planning. Treachery is merged in superior strength; and to overcome the opposition and wipe out resistance movements, which was R's purpose in collaborating with the enemy, the use of a large force and equipment was necessary. The enemy to whom the accused adhered was itself the personification of brute, superior force, and it was this superior force which enabled him to overrun the country and for a time subdue its inhabitants by his brutal rule. The law does not expect the enemy and its adherents to meet their foes only on even terms according to the romantic traditions of chivalry.
3. ID.; ID.; RAPES, WANTON ROBBERY FOR PERSONAL GAIN, AND OTHER FORM OF CRUELTIES AS AGGRAVATING CIRCUMSTANCES OF IGNOMINY AND DELIBERATELY AUGMENTING UNNECESSARY WRONGS.—The law does abhor inhumanity and the abuse of strength to commit acts unnecessary to the commission of treason. There is no incompatibility between treason and decent, human treatment of prisoners. Rapes, wanton robbery for personal gain, and other forms of cruelties are condemned and their perpetration will be regarded as aggravating circumstances of ignominy and of deliberately augmenting unnecessary wrongs to the main criminal objective under paragraphs 17 and 21 of article 14 of the Revised Penal Code. The atrocities abovementioned, of which the appellant is beyond doubt guilty, fall within the terms of the above paragraphs.
4. ID.; ID.; KILLINGS AND OTHER ACCOMPANYING CRIMES BE TAKEN INTO CONSIDERATION FOR MEASURING THE DEGREE AND GRAVITY OF CRIMINAL RESPONSIBILITY.—For the very reason that premeditation, treachery and use of superior strength are absorbed in treason characterized by killings, the killings themselves and other accompanying crimes should be taken into consideration for measuring the degree and gravity of criminal responsibility irrespective of the manner in which they were committed. Were not this the rule, treason, the highest crime known to law, would confer on its perpetrators advantages that are denied simple murderers. To avoid such incongruity and injustice, the penalty in treason will be adapted, within the range provided in the Revised Penal Code, to the danger and harm to which thc culprit has exposed his country and his people and to the wrongs and injuries that resulted from his deeds. The

letter and pervading spirit of the Revised Penal Code adjust penalties to the perversity of the mind that conceived and carried the crime into execution. Where the system of graduating penalties by the prescribed standards is inapplicable, as in the case of homicides connected with treason, the method of analogies to fit the punishment with the enormity of the offense may be summoned to the service of justice and consistency and in furtherance of the law's aims.

APPEAL from a judgment of the People's Court.

The facts are stated in the opinion of the court.

Pedro C. Mendiola for appellant.

Assistant Solicitor General Manuel P. Barcelona and *Solicitor Francisco Carreon* for appellee.

TUASON, *J.:*

Antonio Racaza was charged with treason on 14 counts and tried in the City of Cebu before the First Division of the People's Court. The information is as follows:

"That during the period comprised between January, 1944 and February, 1945, more specifically on or about the dates and periods hereinbelow mentioned, in the municipalities hereinafter stated all within the Provinces of Cebu and Bohol, Philippines, within the jurisdiction of this Court, said accused not being a foreigner but a Filipino citizen owing allegiance to the United States of America and the Commonwealth of the Philippines, in violation of said duty of allegiance did, then and there wilfully, unlawfully, feloniously and treasonably adhere to the Empire of Japan with which the United States and the Philippines were then at war, giving said enemy the Empire of Japan and the Imperial Japanese forces in the Philippines, aid and/or comfort in the following manner, to wit:

" '1. That on or about May 8, 1944, in the City of Cebu, Philippines, for the purpose of giving and with the intent to give aid and comfort to the enemy said accused did, then and there wilfully, unlawfully, feloniously and treasonably acting as a Japanese spy lead, guide and accompany a patrol composed of Japanese soldiers and Filipino undercovers, which apprehended Custodio Abella; that the aforementioned accused did question Abella as to the hiding place of Captain Ibañez, G–2 of the guerrilla forces; that during the investigation, the herein accused hit Custodio Abella several times with a revolver and did threaten to kill him if he did not give the desired information; and while Abella's hands were tied behind his back, the herein accused did knock him down and choke him, while another companion did jump up and down several times on Abella's stomach; that said Custodio Abella was finally taken and detained at the Japanese *Kempei Tai* Headquarters for fifteen days;

" '2. That sometime during the month of August, 1944, in the municipality of Mandawe, Province of Cebu, the accused herein acting as a Japanese spy and undercover with the purpose of giving and with the intent to give aid and comfort to the enemy did, then and there willfully, unlawfully, feloniously and treasonably lead, guide and accompany a patrol composed of two Japanese soldiers and twelve Filipino undercovers which apprehended one Florencio Perez as a guerrilla suspect; that the aforesaid accused and his companions did demand that Perez turn over his pistol to the accused and upon denying of having any pistol, said accused and his companions did hang him with a rope and while he was thus suspended in midair, the herein accused and his companions hit Florencio Perez on the

head and in other parts of the body with the butts of the revolvers and with their fists; that the accused then took Florencio Perez outside the house and threatened to shoot him on the back of his head unless he told them where his pistol was;

" '3. That on or about December 2, 1944, in the municipality of Mandawe, Province of Cebu, the aforesaid accused acting as a Japanese spy for the purpose of giving and with the intent to give aid and comfort to the enemy did, then and there wilfully, unlawfully, feloniously and treasonably lead, guide and accompany three Japanese soldiers to the house of Pablo Seno; that upon arrival at the said house, the herein accused and his companions did apprehend Pablo Seno and his daughter Anunsacion Seno for alleged guerrilla activities and connections and did ransack and take away many objects therein; that said Pablo Seno and Anunsacion Seno after having been tied and tortured by the accused and his companions were imprisoned at the Japanese Kempei Tai Headquarters and since then nothing more was heard of them nor are their whereabouts known;

" '4. That on or about December 2, 1944, in the municipality of Mandawe, Province of Cebu, for the purpose of giving and with the intent to give aid and comfort to the enemy, the aforesaid accused acting as a Japanese spy did, then and there wilfully, unlawfully, feloniously and treasonably lead and guide a patrol of Japanese soldiers and Filipino undercovers to the house of one Rufino Seno for being a guerrilla suspect; that said Rufino Seno was tied, beaten and tortured and brought to and detained at the Japanese Kempei Tai Headquarters at Cebu City and since then nothing more was heard of him nor are his whereabouts known;

" '5. That on or about the first day of July, 1944, in the municipality of Clarin, Province of Bohol, Philippines, said accused, acting as Japanese spy and with the purpose of giving and with the intent to give aid and comfort to the enemy did, then and there wilfully, unlawfully, feloniously and treasonably lead and guide a patrol composed of Japanese soldiers and Filipino undercovers for the enemy which apprehended Leonilo Mercado and Jovito C. Soria for alleged guerrilla activities; that Leonilo Mercado was brought to the municipal jail of Clarin, and detained up to July 12, 1944 when his wife visited him; and since then Leonilo Mercado was not seen again nor heard from, nor are his whereabouts known;

" '6. That on or about August 19, 1944, in the City of Cebu, Philippines, the herein accused who was a Japanese spy, with the purpose of giving and with the intent to give aid and comfort to the enemy did, then and there wilfully, unlawfully, feloniously and treasonably lead and guide a patrol of Japanese soldiers and Filipino undercovers to the house of Silvina Caballon; that upon arrival at said house, the herein accused and his companions did ask Silvina about the whereabouts of her brother who was a guerrilla and to surrender the latter's revolver; that upon receiving an unsatisfactory reply, said accused forcibly undress her, choke and beat her; that the aforesaid accused then took her to another house where through force, violence and intimidation he attempted to have sexual intercourse with her, but which criminal purpose the accused did not realize on account of reasons independent of his own will;

" '7. On or about the 24th day of August, 1944, in the municipality of Mandawe, Province of Cebu, Philippines, said accused acting as Japanese spy, with the purpose of giving and with the intent to give aid and comfort to the enemy did, then and there wilfully, unlawfully, feloniously and treasonably lead, guide and accompany a patrol of fifteen Filipino pro-Japanese undercovers and two Japanese soldiers in search of guerrillas, guerrilla suspects and their supporters, and did apprehend Patricio Suico, Leonardo Ouano and

Eduardo Ouano from their homes and did bring them to the Japanese Navy Kempei Tai Headquarters in Cebu City where they were questioned on the whereabouts of Sulpicio Ouano, brother of Leonardo Ouano and a guerrilla suspect, and Patricio Suico was questioned and blamed for not taking proper steps against the guerrillas as barrio lieutenant; that the accused herein and his companions did bring the aforesaid three persons back to Leonardo's house at Banilad where they were again tied, hung and tortured on account of which Patricio became unconscious; that while said Patricio Suico was thus unconscious, the accused and his companions did build a fire under the sled where Patricio Suico was, on acount of which said Patricio was burned and died; that while being detained in Cebu City, Leonardo and Eduardo Ouano managed to escape and fled to the mountains;

" '8. Sometimes during the month of December, 1944, in the municipality of Lahug, Province of Cebu, Philippines, the accused herein acting as Japanese spy with four other Filipino undercovers for the Japanese Army, with the purpose of giving and with the intent to give aid and comfort to the enemy did, then and there wilfully, unlawfully, feloniously and treasonably capture Pedro Lavares and Luis Hallares and did detain, tie and torture them at the Kempei Tai Headquarters for alleged guerrilla activities; that said accused and his aforesaid companions did detain likewise in said Kempei Tai Headquarters Bonifacio Suico and Aniceto Taranza and did torture them by giving them fist blows, tying them with ropes, hitting them with bamboo poles and wooden pestles to force them to tell the real connections of Mayor Alejandro Fortuna with the guerrillas; that due to said punishment and torture, Bonifacio Suico died; that after torturing Aniceto Taranza, said accused and his companions did bring him to the river bank near by and did kill him with a saber;

" '9. On or about July 28, 1944, in the Mabaling, City of Cebu, Philippines, said accused acting as Japanese spy with the purpose of giving and with the intent to give aid and comfort to the enemy did, then and there wilfully, unlawfully, feloniously and treasonably lead, guide and accompany a patrol of Japanese soldiers and Filipino undercovers for the Japanese Army and did capture Vicente Abadiano, Nazario Abadiano, Tereso Sanchez, Fidencio Delgado and some twenty other Filipinos whose names cannot now be stated all suspected of being guerrillas and of having allegedly taken part in the ambush of Japanese soldiers on board a truck while passing at the boundary of Mambaling on July 25, 1944; that all the persons above-named and twenty others referred to were brought to the Lensa mountains near Ponta Princesa and after having been questioned and tortured, twelve of them incluring Nazario Abadiano and Tereso Sanchez were shot by the herein accused and his companions, all of whom died except Tereso Sanchez who is now an invalid due to wounds he received;

" '10. On or about July 21, 1944, in the City of Cebu, Province of Cebu, Philippines, said accused acting as Japanese spy with the purpose of giving and with the intent to give aid and comfort to the enemy did, then and there wilfully, unlawfully, feloniously and treasonably in company with three Filipino undercovers like the accused and two Japanese soldiers, capture Jose Roda for being the brother of Apolonio Roda alleged G–2 operative for the guerrilla who could not be found, Claros Numeran for being related with Santiago Numeran a guerrilla suspect whom accused and his companions were looking for, and Marciano Alejandrino a guerrilla suspect, and did maltreat and torture said Jose Roda, Claros Numeran and Marciano Alejandrino and later did bring them to a secluded spot at Mambaling and shoot them to death; that due to the fact that the wounds of Jose Roda were not serious, he survived;

" '11. On or about November 17, 1944, in the municipality of Mandawe, Province of Cebu, Philippines, said accused acting as Japanese spy, for the purpose of giving and with the intent to give aid and comfort to the enemy did, then and there wilfully, unlawfully, feloniously and treasonably guide, lead and accompany a patrol composed of ten Filipino undercovers for the Japanese Army and two Japanese soldiers for the purpose of apprehending guerrillas, guerrilla suspects and their relatives and the herein accused and his companions did catch Hipolita Cabahug, Dionisio del Castillo, Victorino del Castillo and Demetrio Congson and did whip and torture the last three persons for being allegedly messengers for the guerrillas; that said accused and his companions finally did kill Dionisio del Castillo and Victorino del Castillo by inflicting fatal wounds on their necks with swords;

" '12. Sometimes in January, 1945, in Inawayan, Pardo, Cebu Province, said accused who was a Japanese spy, with the purpose of giving and with the intent to give aid and comfort to the enemy did, then and there wilfully, unlawfully, feloniously and treasonably lead, guide and accompany a patrol composed of Japanese soldiers and Filipino undercovers for the Japanese to Inawayan, Pardo, Cebu for the purpose of apprehending guerrillas; that the herein accused and his companions did catch one Hospicio Singson from his house, tie him with a rope, hang and torture him urging him to tell about reports and papers from the mountains (guerrilla reports) and questioning him about alleged money contributions to guerrillas; that thereafter said Hospicio Singson was carried by accused and his companions to the local Japanese garrison and since then he was not seen again nor heard from, nor are his whereabouts known;

" '13. On or about the 5th day of January, 1945, in the municipality of Cebu, Province of Cebu, with the purpose of giving and with the intent to give aid and comfort to the enemy the aforesaid accused acting as Japanese spy, did, then and there wilfully, unlawfully, feloniously and treasonably lead a group of Filipinos who were enemy undercovers to the house of Susana Singson; that upon arrival at the said house, said accused and his companions did catch Hospicio Singson, brother of Susana Singson and who was a guerrilla suspect; that the herein accused and his companions tied and tortured Hospicio Singson and brought him to the Japanese Kempei Tai Headquarters in the City of Cebu and that from that date Hospicio Singson was not seen again nor heard from, nor are his whereabouts known;

" '14. That on or about January 25, 1945, in Minglanilla, Province of Cebu, Philippines, said accused who was a Japanese spy, for the purpose of giving and with the intent to give aid and comfort to the enemy did, then and there wilfully, unlawfully, feloniously and treasonably lead and accompany five other Filipino undercovers and did arrest Anacleta Eben, that the herein accused and his companions did take Anacleta to the Japanese Kempei Tai Headquarters where she was questioned on the whereabouts and activities of her daughter who was a member of the women's Auxiliary Service (Guerrilla); that during the questioning Anacleta Eben was tied, hung, boxed, beaten and tortured, and while said accused was questioning her, he did choke and threaten to kill her with a gun.' "

The trial court found the defendants guilty of all the counts and sentenced him to death and to pay a fine of ₱20,000 and costs. It said that "the prosecution substantiated the overt acts specified in counts Nos. 2, 3, 4, 6, 7, 9, 11, 12 and 13 by two competent witnesses, and the rest of the fourteen, and all of them are likewise proven through the confession of the defendant in open Court."

The trial was not conducted in strict accordance with law and the rules of practice and procedure, giving rise to confusions, misunderstanding, and non-presentation of evidence on some charges. The court below itself was led into serious errors.

After several witnesses for the prosecution had given testimony, defendant's counsel informed the court that his client, upon the latter's insistence, was willing "to enter a plea of guilty and ask whatever consideration or mercy the court will give him." Upon being asked whether or not he ratified the statement of his counsel, the defendant answered yes. He also answered yes to the question whether he was aware of the consequences of a plea of guilty (t. s. n., pp. 50–51). However, when the information was read over again, the accused said that he admitted some of the charges but not all (t. s. n., pp. 51–52). Specifically, he said he pleaded guilty to counts 2, 3, 4, 7, 12, 13 and 14 and not guilty to counts 1, 5, 6, 8, 9, 10 and 11 (t. s. n., pp. 54–55).

The prosecution then resumed the presentation of evidence and called witnesses to substantiate the charges to which a plea of not guilty was entered. But after three new witnesses had taken the stand, and while the third of them was testifying, counsel for the accused reiterated "his petition at the instance of the accused himself", that the latter be allowed to change his plea of not guilty to that of guilty to all the 14 counts. Informed of his attorney's statement, the defendant said "I am pleading guilty. I accept my guilt" (t. s. n., pp. 71–73).

As counsel insisted on putting his client on the stand, the prosecution went ahead with its witnesses who testified on counts 6, 9, 12 and 13. Then it rested and the accused testified on his own behalf.

According to defense counsel the purpose of the defendant's testimony was not to deny his guilt for the crime of treason; it was, he added, to "clarify certain points which he (accused) denied when he was informed again of the contents of the information filed against him."

After having been sworn the defendant again said that some of the charges filed against him were not true; that in some of those cases there were other persons responsible for the commission of the crime, as in the Basac massacre (count 9). Referring to this count 9, he said that it was Captain Suriyama who ordered that those people who were tortured because of their refusal to give information, be taken to Imomaki, Isisaka and Muraki, after which they were marched off to Lensa by Japanese soldiers. There were about 20 prisoners, he said. Upon arriving at Lensa they were shot by Muraki and Isisaka in the presence of Captain Suriyama. He admitted having gone with these people and seen Isisaka and Muraka shoot the prisoners

with luggers. He said about 700 civilians were herded on that particular date and that it was among these 700 that 20 were executed.

In answer to a question of Judge Saguin if he wanted to make any statement regarding counts 3 and 4, to which he had pleaded guilty, the defendant answered in the affirmative. He said that when they apprehended Pablo Seno and Anunciacion Seno, he and Pedro Labares stood guard under the house while the Japanese went up. When the Japanese came down they brought the Senos. From there they returned to the Normal School where the prisoners were confined. That was, he said, all he could say.

As to Del Castillo (count 11), he said he was not the one who killed him but two Japanese by the names of Isituca and Pujisaki; that it was Pedro Labares and not he who reported Del Castillo to the Japanese; that he accompanied Labares because the Japanese ordered him to do so. He said that his sole connection with the Japanese was as a driver of Watanabi. He said that after he was captured as a guerrilla he was told that he should drive their car or else he would be killed (t. s. n., pp. 98–102).

Regarding count 2, he said it was Japanese accompanied by some Filipinos, one of whom was Antonio Tancingco, who arrested Florencio Perez. Reminded that he had pleaded guilty to this count, the accused stated that he was groggy because right in the court room, after the session, he had been struck in the head and that when he came back to court he was still confused. Nevertheless, he said, having accepted his guilt he wanted to abide by his plea fully realizing its consequences, now that his mind was already clear. (T. s. n., pp. 102–104.)

In answer to a direct question of Judge Borromeo, the accused answered in the affirmative the question whether he admitted the facts and pleaded guilty to counts 2, 3, 4, 7, 12, 13 and 14 (t. s. n., p. 104). But when these last counts were read over again and he was told to plea after each count was read, he pleaded guilty to counts 2 and 3, and not guilty to counts 4, 7, 12, 13 and 14 (t. s. n., p. 105).

With specific reference to count 7, he said: "When we apprehended Suico and Ouano, they were brought to the pier before Yusidati, a sergeant of the Japanese Military Police here. At night time, Ouano, his nephew and Patricio were taken by four Japanese by the names of Muraki, Isisaka, Pujisaki and Koydi and other members of the Japanese Military Police. We stated from the pier about 9:00 o'clock of that evening and they took a truck and proceeded to Mandawe. Upon reaching Mandawe, right in the house of Leonardo Ouano, there they were investigated by Muraki. In the affidavit, it says that Patricio Suico was burned and that is not true. The truth is that, during that night, those three were brought back here to the pier,

and from that time on Ouano and Suico were never heard by me any more." He admitted that he took part in the apprehension of these persons but said that he was ordered to do so by Watanabi (t. s. n., pp. 106–107).

With respect to count No. 12, he said that those who took part in the apprehension of Hospicio Singson was Maximo Bati *alias* Pacho (t. s. n., p. 108).

With regard to count 13, he said he had nothing to say and renewed his plea of guilty to this charge (t. s. n., pp. 108–109).

As to the counts which the defendant denied or qualified, his plea does not possess the requirement of a plea and should have been rejected and the parties directed to introduce their evidence. A plea of guilty must be unconditional save to explain mitigating circumstances. The defendant's responsibility on these counts therefore have to be gauged by the prosecution's evidence and defendant's admissions.

From the defendant's changing attitude, changing pleas and statements, only counts 2, 3, and 13 survive the test of having been confessed in open court. The prosecution's evidence and defendant's testimony substantiate counts 4, 6, 9 and 11. On count 7, only one witness testified; on the rest none whatever.

Count 4. Maximina Basubas, 46 years old, testified that on December 2, 1944, the accused apprehended her son Rufino Seno for being a guerrilla; that Rufino Seno was tied, beaten, tortured, and taken to and detained at the Japanese Kempei Tai headquarters in Cebu City; that since then he heard nothing more of him; that with the accused were other Filipinos and Japanese.

Jose Cui, 24 years old, testified that on December 2, 1944, Antonio Racaza "raided our place". Racaza was accompanied by other persons, Japanese and Filipinos; that he (witness) was arrested with four others, among them Apolonio Ceniza and Rufino Seno. They were taken to the U. P. Building in the city of Cebu, near which he was punished personally by Antonio Racaza, hung by the hands tied at his back and whipped with a golf club (witness showed the scar). He said that he was accused of being a guerrilla; that Rufino Seno was brought with him and others in the afternoon of December 3 to the Kempei Tai; that a Japanese took Rufino Seno out and he had not seen Rufino since.

Count 6. Silvina Cabellon, 22 years old, single, testified that in August 1944, Antonio Racaza and others came to their house looking for somebody—her brother who was a soldier. Among the men who came she recognized only the accused. In her house the accused and others undressed her. She prayed to God and pleaded that she be not undressed. They succeeded in their purpose however

and her naked body was exposed. They pushed her mother when the latter was not able to produce any arm. From that place they took her to Buakaw where they went up a house apparently in search of something. When they did not find anything they moved to another house. In the latter house they caught a man, took him behind a tree and there killed him. Then a soldier, Teofilo Navarro, who had killed that person, approached her and said, "Well, how do you like to come along with me behind the cassava trees?" She refused and then they proceeded to the provincial road with her; she was crying. At Basac, near a big house owned by Filemon Rago, Antonio Racaza told her, "Come along with me." Once in that place he hugged her and kissed her and told her to take off her panties. Then she said her devotion to the Virgen Mary praying that she might be delivered from her aggressors. Luckily, the accused did not succeed. Afterward one companion of the accused, Jose Abascas, slammed her against a coconut tree and embraced her. Later, a truck passed by and she was told to get on. Then Racaza approached the Japanese and later she was released.

Raymunda Sabillano, 42 years old, testified that on August 19, 1944, Antonio Racaza came to her house at night (it was Saturday) looking for her son who was a guerrilla soldier. He had many companions among whom were two Japanese. They were armed but Racaza was not. As she was not able to produce any rifle when requested to do so, they undressed her daughter, Silvina Cabellon, and Antonio Racaza told witness to step out. When she heard her daughter cry out she tried to get inside but they blocked her way. Afterward they let her daughter dress up again and took her away. About 3 o'clock in the morning the girl returned. Her house is in Pardo, Cebu City.

Count 9. Hilaria Cabañezas, 56 years old, testified that on the 29th of July, 1944, her house was surrounded and she and the inhabitants of the house were apprehended and taken to a place near the Normal School in Basac. Those who arrested them were, among others, Antonio Racaza, Carding and Loloy. These three tied them and she pleaded for mercy. From her house she could see many people tortured in the Basac school building. There must have been around 1,000 people there.

Pastor Abadiano, 45 years old, testified that on the 29th of July, 1944, the accused and his several companions with Japanese came up to his house and maltreated him, trampling on his body. When he could not endure the punishment any longer they asked him where his nephew Inocencio was. Inocencio was a guerrilla soldier. Among those who were tortured and killed were Sario Abadiano, Tomas Bacalla, Quirico Abellanosa and Lope Bacon. The witness was allowed to go when they found the brother of Ino-

cencio. Vicente Abadiano was one of those who survived the torture.

Tereso Sanchez, 25 years old, testified that he knew Antonio Racaza. On July 29, 1944, he was arrested by Filipino spies. About 1,000 were apprehended and taken to the school building in Basac. They were taken there to be screened for guerrillas. Among those who tortured civilians was Antonio Racaza. He saw Racaza hang one of the persons arrested; that was Jose de la Cerna. Antonio Racaza was armed with a revolver. After he was tortured he was taken to the mountain of Lensa. With him were about 24; all of them were tied. When they arrived at the mountain, the Japanese and their Filipino cohorts told them to sit down. The prisoners were taken by the Japanese to another place where they were shot. The witness was shot by Filemon Delgado and was hit in the neck, the bullet coming out of his left eye. He was left for dead and that was how he lived to tell the story. Before he was shot, Nazario Abadiano was shot by Antonio Racaza and killed immediately.

Vicente Abadiano, 19 years old, testified that he was apprehended on July 29 and brought to a place where his brother Nazario was killed. His brother was apprehended on July 29 and brought up where he was killed by Antonio Racaza. He actually saw Racaza shoot his brother; it was in Lensa, in the mountain. His brother had his back on Racaza when Racaza shot him in the buttock. He saw Tereso Sanchez as one of the victims in that massacre. He also witnessed the mass torture in the school building before the victims were marched up to the mountains.

Jose de la Cerna, 34 years old, testified that on July 29, he was one of the people arrested in Basac and concentrated in the school building. Those who made the arrests were Japanese and Filipino undercovers. Among these were Antonio Racaza, Antonio Tancinco, Roberto Bautista *alias* Eriberto Ocampo, Filemon Delgado, Margarito Campos and Jesus Campos. Antonio Racaza was one of those who beat him (witness) with an iron bar, kicked him, boxed him and inserted a galvanized iron tube into his throat through which sand was poured. He was choked and was unconscious for several minutes. When he came to, they questioned him as to the whereabouts of his brother who was with Governor Abellanosa. Then he was hung from two to five o'clock in the afternoon. The cause of the massacre and mass torture in Basac was that about three or four days before July 29, the guerrillas attacked a train loaded with naval officers on Mambaling bridge in Dulho, Cebu.

Count 11. Hipolita Cabahug, 18 years old, widow, testified that her husband was captured by Racaza and his companions on November 16, 1944, in the municipality of Mandawe, Province of Cebu. On that date Antonio

Racaza came up to her house leaving his companions below. He threatened the people in the house with his sword, told them not to move, and asked the witness whether her husband was a soldier. Because her answers were not satisfactory, he arrested her and her husband and took both of them to the Kempei Tai headquarters where Antonio Racaza hung her husband. While her husband was hanging in midair they beat him with a big bat. Then they lowered her husband and Racaza hung her instead. While she was dangling in the air they stepped on her husband's prostrate body trying to force him to admit that he was a guerrilla. They put on his neck a piece of lumber and stepped on it while a man sat astride her husband's abdomen. Afterward they hung her husband again. After he was released this time he was taken across a creek; that was the last she saw of him. The cadaver was found by her father-in-law, Gregorio del Castillo. Her brother-in-law, Victorino del Castillo, was taken the next morning and brought to the same place. They also hung Victorino and beat him while hanging. He died before his body was brought down.

Gregorio del Castillo, 50 years old, testified that his sons are dead because they were arrested by Antonio Racaza at their place. It was November 16, about 9 o'clock in the evening. Hipolita Cabahug is his daughter-in-law living with him. He was present when his sons were arrested. He himself was about to be arrested with his sons. Hipolita was told to come along. He found the next day the bodies of his sons in a creek. One of them was naked with several wounds and the neck was almost severed from the body. Rope was still tied around his hands.

To sum up, we find the defendant guilty of counts 2, 3 and 13 by the defendant's plea of guilty, and of counts 4, 6, 9 and 11 by the testimony of two or more eye-witnesses to the overt acts. These admitted and proven charges, in the opinion of the majority of the court, lead to the same result reached by the trial court.

The trial court found the aggravating circumstances of evident premeditation, superior strength, treachery and employment of means for adding ignominy to the natural effects of the crime.

The first three circumstances are, by their nature, inherent in the offense of treason and may not be taken to aggravate the penalty. Adherence and the giving of aid and comfort to the enemy is, in many cases, as in this, a long, continued process requiring, for the successful consummation of the traitor's purpose, fixed, reflective and persistent determination and planning.

So are superior strength and treachery included in the crime of treason. Treachery is merged in superior

strength; and to overcome the opposition and wipe out resistance movements, which was Racaza's purpose in collaborating with the enemy, the use of a large force and equipment was necessary. The enemy to whom the accused adhered was itself the personification of brute, superior force, and it was this superior force which enabled him to overrun the country and for a time subdue its inhabitants by his brutal rule. The law does not expect the enemy and its adherents to meet their foes only on even terms according to the romantic traditions of chivalry.

But the law does abhor inhumanity and the abuse of strength to commit acts unnecessary to the commission of treason. There is no incompatibility between treason and decent, human treatment of prisoners. Rapes, wanton robbery for personal gain, and other form of cruelties are condemned and their perpetration will be regarded as aggravating circumstances of ignominy and deliberately augmenting unnecessary wrongs to the main criminal objective under paragraphs 17 and 21 of Article 14 of the Revised Penal Code. The atrocities above mentioned, of which the appellant is beyond doubt guilty, fall within the terms of the above paragraphs.

For the very reason that premeditation, treachery and use of superior strength are absorbed in treason characterized by killings, the killings themselves and other accompanying crimes should be taken into consideration for measuring the degree and gravity of criminal responsibility irrespective of the manner in which they were committed. Were not this the rule, treason, the highest crime known to law, would confer on its perpetrators advantages that are denied simple murderers. To avoid such incongruity and injustice, the penalty in treason will be adapted, within the range provided in the Revised Penal Code, to the danger and harm to which the culprit has exposed his country and his people and to the wrongs and injuries that resulted from his deeds. The letter and pervading spirit of the Revised Penal Code adjust penalties to the perversity of the mind that conceived and carried the crime into execution. Where the system of graduating penalties by the prescribed standards is inapplicable, as in the case of homicides connected with treason, the method of analogies to fit the punishment with the enormity of the offense may be summoned to the service of justice and consistency and in furtherance of the law's aims.

The judgment appealed from is correct in its result and the same should be affirmed with costs. However, as four justices dissent from the imposition of the death penalty, the appealed sentence is modified and reduced to *reclusión perpetua* and legal accessories, a fine of ₱20,000 and costs.

Moran, C. J., Feria, Pablo, Bengzon, Briones, JJ., concur.

PERFECTO, *J.*, concurring:

"A big crowd gathered at the plaza of the Cebu capitol during the three days of trial and right there the public showed visible indignation with an eager desire that the collaborators be dealt with by the court of justice without mercy."

The above quotation comes from the appealed decision, finding appellant guilty of the crime of treason and sentencing him to death and to pay a fine of ₱20,000 and the costs.

There is no question as to appellant's guilt. The evidence on record is conclusive, and defendant himself pleaded guilty to several of the counts of the information. We find that he committed the acts alleged in the information. The only question raised in this appeal refers to the penalty imposed by the People's Court.

Counsel *de oficio* makes two assignments of error: First, that the lower court erred in not considering the plea of guilty entered by the defendant as a mitigating circumstance, and second, in considering evident premeditation, taking advantage of superior strength, treachery and employing means to add ignominy to the natural effects of his acts, as aggravating circumstances, and prays that the appealed judgment be modified to any degree within the limits of *reclusión temporal* and to a fine of ₱10,000.

The prosecution maintains that the plea of guilty cannot be considered as a mitigating circumstance in favor of appellant because it had been entered after seven witnesses for the prosecution had already testified. But counsel *de oficio* points out that the plea should be considered as a mitigating circumstance, although entered after some witnesses for the prosecution had testified, because of the provisions of paragraph 10 of article 13 of the Revised Penal Code, which provides that "any other circumstance of a similar nature and analogous to those above-mentioned," should be considered, referring to the specified mitigating circumstances. The similarity or analogy between a plea of guilty before any evidence of the prosecution is presented and a plea of guilty entered after some of the witnesses for the prosecution had testified cannot seriously be disputed. The circumstances in question should be taken into consideration in the judgment.

The appealed decision states that the aggravating circumstances in question concurred "in most of the overt acts committed by the defendant," but without specifying the specific acts constituting said circumstances. The prosecution's brief supplies the needed specifications.

The undressing of two women and attempted rape of one of them are pointed out as adding ignominy to the crime. According to the evidence, Silvina Cabellon was the only one undressed. The attempted rape on the person of Sil-

vina Cabellon may be considered as ground for the prosecution of a different offense, but cannot be considered as aggravating treason, a crime political in nature. In the attempted rape there was nothing political and it had nothing to do with defendant's adherence and aid to the enemy.

Nighttime, superior strength, aid of armed forces, treachery, and evident premeditation should be considered as essential elements of the treason committed by appellant. We take judicial notice of the fact that said elements have always or almost always accompanied the procedures undertaken by the Japanese for the suppression of guerrillas. The accused, having adhered to the enemy and allowed himself to be a tool in his political objective of suppressing the underground movement, it was natural for him to follow the same tactics of his masters.

The medium penalty provided by article 114 of the Revised Penal Code should be imposed upon appellant, as no aggravating nor mitigating circumstances can affect his legal responsibility. Although his plea of guilty should be considered in his favor, it should be considered only with regard to the counts to which he pleaded guilty, and there are other counts in the information to which he did not plead guilty and which are fully supported by the evidence on record.

A majority voted to affirm the appealed decision but in view of the contrary opinion of the writer, the principal penalty is modified to *reclusión perpetua*, and affirmed in all other respects.

We cannot vote for the affirmance of the appealed penalty, not only for the reasons as above stated, but for the further reason that it is not beyond the realm of probability that the trial court could not have been completely free from the psychological effect of the mob frenzy described in the *a quo* decision the pertinent paragraph of which is quoted at the beginning of this opinion.

Judgment affirmed.

RESOLUTION OF THE SUPREME COURT

REPUBLIC OF THE PHILIPPINES
SUPREME COURT
MANILA

EXCERPT FROM THE MINUTES OF JUNE 12, 1950

* * * * * * *

"The Court resolved to discontinue the subscription service to mimeographed copies of decisions (authorized by previous resolutions), effective July 1, 1950, and until there shall have been appropriations therefor."

* * * * * * *

DECISIONS OF THE COURT OF APPEALS

[No. 1578–R. September 17, 1948]

JOSE S. OCAMPO and OTILLA SOLER DE OCAMPO, plaintiffs and appellants, *vs.* JOSE DY PUACO ET ALS., defendants and appellees.

1. PLEADINGS AND PRACTICE; JUDGMENT, FINALITY OF; LACHES; CASE AT BAR.—The record of the instant case shows that on April 18, 1944, the lower court rendered judgment in said case against the defendants, the herein plaintiffs, and the latter did nothing to protect or preserve their rights and interests in the matter until November 20, 1945, already after the lapse of the six-month period provided by Rule 38, section 6, of the Rules of Court, when they brought the present action. It is manifest that plaintiffs herein have been not only guilty of laches, in not appealing from said judgment rendered in case No. 139 or taking such other steps as were necessary for the protection of their rights and interests in the matter (Coombs *vs.* Santos, 24 Phil., 446; Daipan *vs.* Sigabu, 25 Phil., 184), but what is worse, received the consideration mentioned as a condition of the mortgage and executed a release and discharge of the same (Exhibit 2). In accordance with the doctrine laid down in the cases just cited and others of similar import, it is undeniable that upon their failure to exercise their rights in the premises, particularly under Rule 41 of the Rules of Court, the judgment of the Court of First Instance of Camarines Sur rendered in said case No. 139 became final and their cause of action in this case is barred by a prior judgment rendered on April 18, 1944, and executed on July 12, 1944.

2. INTERNATIONAL LAW; ENEMY MILITARY OCCUPATION; JUDICIAL ACTS AND PROCEEDING DURING OCCUPATION, THEIR VALIDITY; PRINCIPLE OF POSTLIMINY (POST-LIMINIUM) APPLIED; CASE AT BAR.—In their motion for reconsideration of the order of the Court which dismissed the complaint filed by plaintiffs in this case, they allege that they were not given the opportunity to show to the Court at the hearing of case No. 139 that the Japanese military currency, which was offered by defendants herein in payment of their debt, was worthless, that they were under duress because they could not question the value of said Japanese military currency in open court without endangering their safety and security, and that the proceedings had before the Court of First Instance of Camarines Sur in said case No. 139, justify the annulment of said judgment. It has been well settled by the Supreme Court in the leading case of Co Kim Cham alias Co Cham *vs.* Eusebio Tan Keh et al., (G. R. No. L–5, Sept. 17, 1945), that the judicial acts and proceedings of the courts of justice under the auspices of the Philippine Executive Commission and the Republic of the Philippines during the Japanese Military occupation, which are not of a political complexion, "were good and valid, and by virtue of the well-known principle of postliminy (post-liminium) in international law, remained good and valid after the liberation or reoccupation of the Philippines by the American and Filipino Forces under the leadership of General Douglas MacArthur."

APPEAL from a judgment of the Court of First Instance of Camarines Sur. Prieto, J.

The facts are stated in the opinion of the court.

Ezekiel S. Grageda for appellants.
Alfelor & Mandrada for appellees.

TORRES, *Pres. J.:*

The printed Record on Appeal shows that on September 29, 1941, defendants secured from plaintiffs a loan of ₱4,000 Philippine currency, at 12 per cent interest per annum, for one year. It was guaranteed by a mortgage executed by defendants on a parcel of land covered by certificate of title No. 717 issued by the register of deeds of Camarines Sur, and the corresponding annotation of the encumbrance was made accordingly.

The loan became due and demandable at the expiration of the period of one year stipulated by the parties, but the plaintiffs, as stated in their complaint, "out of consideration to the defendants, did not file any action to foreclose the mortgage." Sometime in November, 1943, the defendants tendered ₱4,000 in Japanese Military notes, which the plaintiffs refused, on the ground that the kind of money they loaned to defendants being "genuine Philippine money" they could not be compelled to accept, in payment of the debt, "any other currency". In view of the refusal of the plaintiffs to accept the ₱4,000 in Japanese Military notes from the defendants, the latter deposited said amount with the Clerk of the Court of First Instance and brought therein a suit against the former for the cancellation of the mortgage (civil case No. 139).

Alleging that they could not question in open Court the validity of the Japanese war notes, which the mortgage debtors tendered in payment of their debt, without jeopardizing their personal security and even their lives, the plaintiffs answered the complaint but abstained from presenting evidence in support of their answer and likewise refrained from collecting the ₱4,000 in Japanese currency deposited by these defendants with the Clerk of the Court. Thus, judgment was rendered by the lower Court against the plaintiffs herein granting the prayer of these defendants in case No. 139 (Exhibit 1).

In their complaint filed in this case on October 25, 1945, plaintiffs prayed the Court of First Instance of Camarines Sur:

"* * * (1) that the decision, Annex A, be annulled, the same having been obtained through fraud; (2) that the defendants be condemned to pay to the plaintiffs jointly and severally within 90 days from notice of the decision the amount of ₱4,000 Philippine currency plus all the due interests thereon plus 20 per cent of the total indebtedness to cover attorney's fees and other expenses as provided for in the mortgage deed; (3) that in default of such payment, the property mortgaged be ordered sold to realize the mortgage debt and costs; and, (4) that plaintiffs be given any other remedy which may be just and equitable."

On December 4, 1945, the defendants filed a motion to dismiss said complaint on the ground that the cause of action

of plaintiffs is barred by a prior judgment rendered by the Court of First Instance of Camarines Sur on April 18, 1944 (Exhibit 1); that said judgment has already been executed when plaintiffs, after receiving the consideration named as a condition of the mortgage "sought to be foreclosed in the present action, executed a release and discharge of the same, acknowledged before a notary public," (Exhibit 2); that by virtue of the execution of the judgment above referred to, the Court has lost jurisdiction over the subject matter of the action and, for that reason, the Court is now powerless to set aside said judgment rendered on April 18, 1944, while the present action was filed by plaintiffs on November 20, 1945, in view of which, defendants allege, the period of six months provided by Rule 38 of the Rules of Court having expired, the cause of action of plaintiffs is barred by the statute of limitations.

Taking into consideration the allegations made by defendants in their motion to dismiss jointly with those made by plaintiffs in their complaint, and in view of the fact that the plaintiffs—defendants in civil case No. 139—did not offer any evidence in support of their answer and merely questioned the validity of the deposit made by the plaintiffs, the Court of Firts Instance, on April 18, 1944, rendered judgment against defendants—the plaintiffs herein—declaring that the loan secured by plaintiffs in that case has been paid and inasmuch as the redemption of the land mortgaged has been effected, ordered the register of deeds to cancel the entry of the mortgage made on the Certificate of Transfer No. 717, and to this effect the defendants—plaintiffs herein—were ordered to deliver to said register of deeds the duplicate of said certificate of title to the land involved in the mortgage. The Court likewise provided that the defendants—plaintiffs herein—may collect from the Office of the Clerk of Court the sum of ₱4,015 deposited by plaintiffs in said case.

This case stands, therefore, dismissed by the order of the lower Court of February 12, 1947, as the motion for reconsideration filed by these appellants was denied.

Having appealed from the order of the lower Court dismissing their complaint, counsel for appellants, in the brief filed in their behalf, makes the following assignment of errors:

"1. The lower Court erred in holding that the cause of action is barred by a prior judgment;

"2. The lower Court erred in holding that the claim or demand set forth in the complaint has been released;

"3. The lower Court erred in declaring that the present action is barred by the statute of limitations;

"4. The lower Court erred in dismissing the complaint."

From the facts stated above, it is apparent that plaintiffs and apellants have brought this section for annulment of the judgment rendered by the Court of First Instance of Ca-

marines Sur in case No. 139 on the ground that they could not be compelled by defendants-appellees to accept Japanese war notes in payment of their debt of ₱4,000, Philippine currency, and that at that time they could not question in open Court the value of ₱4,000 in Japanese currency tendered by defendants-appellees in payment of said debt; they also brought this action to foreclose the mortgage executed by defendants-appellees when the latter incurred in said indebtedness.

It is also a matter of record that these plaintiffs-appellants failed to adduce evidence in support of the allegations they made in their answer to the complaint filed in said case No. 139. Moreover, the record shows that on April 18, 1944, the lower Court rendered judgment in said case against the defendants, the herein plaintiffs, and the latter did nothing to protect or preserve their rights and interests in the matter until November 20, 1945, already after the lapse of the six-month period provided by Rule 38, section 6, of the Rules of Court, when they brought the present action. It is manifest that plaintiffs herein have been not only guilty of laches in not appealing from said judgment rendered in case No. 139 or taking such other steps as were necessary for the protection of their rights and interests in the matter (Coombs *vs.* Santos, 24 Phil., 446; Daipan *vs.* Sigabu, 25 Phil., 184), but what is worse, received the consideration mentioned as a condition of the mortgage and executed a release and discharge of the same (Exhibit 2). In accordance with the doctrine laid down in the cases just cited and others of similar import, it is undeniable that upon their failure to exercise their rights in the premises, particularly under Rule 41 of the Rules of Court, the judgment of the Court of First Instance of Camarines Sur rendered in said case No. 139 became final and, as alleged by defendants-appellees, their cause of action in this case is barred by a prior judgment rendered on April 18, 1944, and executed on July 12, 1944.

It cannot be denied that the Court that rendered the order, which is the subject matter of this appeal, had jurisdiction over the subject matter and the parties, that said order was on the merits of the case, and that between this case (No. 113) and the previous case (No. 139) there is identity of parties, subject matter and cause of action. In view of such premises, the conclusion that can be drawn is that the doctrine of *res adjudicata* is perfectly applicable to the case at bar.

"As elsewhere indicated, a judgment becomes final where no appeal is perfected therefrom within the time provided by these rules. Prior to the expiration of the time to appeal, or where an appeal is perfected, the judgment does not possess such character of finality as to give it the authority of *res adjudicata*. The reason is that prior to the expiration of the time to appeal, the judgment is still subject to amendments and such changes as the court might deem proper in conformity with justice and equity, except when the

aggrieved party enters satisfaction of judgment, in which event the judgment becomes final and conclusive and can no longer be reviewed. After the expiration of the time to appeal, if no appeal is perfected, then the judgment becomes the settled law in the case, which cannot be modified or amended, either by the court who rendered it, or by any other court, except, naturally, to correct clerical errors, and except in alimony cases where the amount of alimony may be changed according to changeable circumstances.

"After a judgment has become final, its findings as well as all interlocutory orders issued during the pendency of the case, constitute *res adjudicata*." (Gorayeb *vs.* Hashim, 47 Phil., 87; Hubalib *vs.* Insular Drug, 36 Off. Gaz., 2452; Moran, Comments on the Rules of Court, Vol. 1, p. 706).

In their motion for reconsideration of the order of the Court which dismissed the complaint filed by plaintiffs in this case, they allege that they were not given the opportunity to show to the Court at the hearing of case No. 139 that the Japanese military currency, which was offered by defendants herein in payment of their debt, was worthless, that they were under duress because they could not question the value of said Japanese military currency in open Court without endangering their safety and security, and that the proceedings had before the Court of First Instance of Camarines Sur in said case No. 139, justify the annulment of said judgment. It has been well settled by the Supreme Court in the leading case of Co Kim Cham *alias* Co Cham *vs.* Eusebio Tan Keh et al., (G. R. No. L–5, Sept. 17, 1945), that the judicial acts and proceedings of the courts of justice under the auspices of the Philippine Executive Commission and the Republic of the Philippines during the Japanese Military occupation, which are not of a political complexion "were good and valid, and by virtue of the well-known principle of postliminy (post-liminium) in international law, remained good and valid after the liberation or reoccupation of the Philippines by the American and Filipino Forces under the leadership of General Douglas MacArthur." Mr. Justice Feria, speaking for the Supreme Court in said case, quoting from Hall, International Law, 7th Edition, p. 518), said:

"* * * According to that well-known principle in international law, the fact that territory which has been occupied by an enemy comes again into power of its legitimate government or sovereignty, 'does not, except in a very few cases, wipe out the effects of acts done by an invader, which for one reason or another it is within his competence to do.' Thus judicial acts done under his control, when they are not of a political complexion, administrative acts so done, to the extent that they take effect during the continuance of his control, and the various acts done during the same time by private persons under the sanction of municipal laws, remain good. Were it otherwise, the whole social life of a community would be paralyzed by an invasion; and as between the state and individuals the evil would be scarcely less,—it would be hard for example that payment of taxes made under duress should be ignored and it would be contrary to the general interest that sentences passed upon criminals should be annulled by the disappearance of the intrusive government."

It appears, therefore, that pursuant to the authorities and decisions quoted above, and inasmuch as we fail to perceive the commission by the lower Court of the errors assigned by appellant, it becomes our bounden duty to uphold the order appealed from.

We, therefore, affirm the order of the Court of First Instance of Camarines Sur of February 12, 1947, which dismisses the complaint in this case, with costs against appellants.

Endencia and *Felix, JJ.*, concur.

Order affirmed.

[No. 2240-R. September 21, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* FELIPE REAL, accused and appellant

1. MARRIAGE; PRESUMPTION OF MARRIAGE; PROOF NECESSARY TO OVERCOME PRESUMPTION.—A man and woman who are living in marital relations, under the same roof, are presumed to be legitimate spouses, united by virtue of a legal marriage contract, and this presumption can only be rebutted by sufficient contrary evidence. (U. S. *vs.* Memoracion et al., 34 Phil., 633.)
2. ADULTERY; DELAY IN FILING COMPLAINT; CONSENT NOT PRESUMED FROM DELAY IN FILING COMPLAINT.—Delay in filing a complaint for adultery or concubinage does not imply consent to or acquiescence in the illicit relations, if there are good reasons for the delay. In the case of Mortiga *vs.* Serra et al (5 Phil., 34) the ofended party did not file the complaint as soon as he learned of the illicit relations of his spouse in 1899 but in 1904, for the reason that the defendant during the Philippine Revolution of 1899 was a revolutionary officer and the complainant was afraid that he might take vengeance against him by availing himself of his military authority. This delay was not construed by the Court as consent.

APPEAL from a judgment of the Court of First Instance of Laguna. Ibañez, J.

The facts are stated in the opinion of the court.

Juan A. Baes for appellant.

Assistant Solicitor-General Barcelona and *Solicitor Makasiar* for appellee.

JUGO, *J.*:

Felipe Real and Juana Villanueva were accused of concubinage before the Court of First Instance of Laguna. After trial they were found guilty, Felipe Real being sentence to suffer from three (3) months and eleven (11) days of *arresto mayor* to one (1) year, eight (8) months and twenty-one (21) days of *prisión correccional,* and Juana Villanueva to two (2) years, four (4) months and one (1) day of *destierro* to a territory beyond twenty-five kilometers from the municipality of Santa Maria, Laguna, with the accessory penalties of the law, and to pay the costs. Felipe Real appealed.

In view of the fact that the official and church records of marriages in the municipality of Santa Maria were destroyed during the last war, the prosecution presented oral evidence as to the marriage celebrated between Felipe Real and Maria Real in the Roman Catholic Church of Santa Maria on June 18, 1911, by Father Lorenzo Fernandez, with Engracio Real and Cirila Gonzales as sponsors. Of this marriage, the spouses have had six children, three of whom died, and the other three are living. In addition to the testimony of Maria herself, Leoncio Real and Dolores Real, related to both contracting parties, testified that they were eye-witnesses to the marriage of Maria and Felipe. Salome Villanueva, widow and first cousin of Felipe, stated that she was married in the same church and on the same date as Felipe and Maria. Felipe claims that these witnesses are biased against him on account of a certain question regarding property. This, however, would not be sufficient to induce those witnesses to commit perjury in such a grave matter. Furthermore, in the baptism certificates of the six children begotten by Felipe and Maria, Felipe furnished the detail that he was the husband of Maria. All of their neighbors have always considered them as husband and wife, legally married. In the case of U. S. *vs.* Villafuerte (4 Phil., 476) it was said:

"CRIMINAL PROCEDURE; EVIDENCE; PRESUMPTIONS.—Although no certificate of marriage has been introduced in evidence to establish the marital relations bteween the offended party and the defendant, yet, if both parties have ben living together and have been known as husband and wife, the presumption, no proof to the contrary having been adduced, is that they were legally united by the bonds of marriage."

In the case of U. S. *vs.* Memoracion et al. (34 Phil., 633), the Supreme Court held:

"ADULTERY; PAROL PROOF OF MARRIAGE.—In an action for the crime of adultery the marriage of the offended person to one of the offending persons may be proven by oral testimony, provided said testimony satisfies the conscience of the court. Whether the oral testimony is sufficient or not must depend upon each particular case. The declaration of the offended person, as well as that of others who have personal knowledge of the marriage, is competent proof to show marriage. Corroboration of such testimony is not absolutely necessary. It is necessary, however, to present proof sufficient to satisfy the court that the marriage actually existed.

"MARRIAGE; PRESUMPTION OF MARRIAGE.—A man and woman who are living in marital relations, under the same roof, are presumed to be legitimate spouses, united by virtue of a legal marriage contract, and this presumption can only be rebutted by sufficient contrary evidence."

The oral evidence presented satisfies both the trial court and this Court that Felipe and Maria were legally married.

There is no question that Felipe Real and Juana Villanueva cohabited with each other, under scandalous circumstances, from the year 1939 up to the filing of the

complaint herein, as both of them admitted that fact in their testimony in addition to the evidence presented by the prosecution.

However, the appellant claims that, assuming that he was legally married to Maria, still she cannot complain for the reason that she consented to the illicit relations between him and Juana. An analysis of the facts shown by the record leads to the conclusion that his claim is without foundation. Maria did not take action against the defendants from the year 1939 to September, 1941, although she knew of the illicit relations, because she wanted to dissuade Felipe by means of her influence and that of their children from continuing said relations, for the purpose of maintaining peace in the household and unity in the family, which is a very laudable purpose. The home should not be broken if it can be avoided. But after a long wait, Maria, seeing that all their efforts to persuade Felipe to return to the right path were in vain, filed a complaint before the Justice of the Peace Court of Santa Maria in September, 1941. The case was transmitted to the Court of First Instance for trial on the merits, but on December 8, 1941, when the war broke out, the fiscal, the complainant, and the defendants agreed to ask for the temporary dismissal of the case "without prejudice to the filing of a new information against the said accused if circumstances so warrant." It will be seen that this dismissal did not amount to a consent to the illegal acts of the accused, especially with regard to the illicit relations which took place after December 8, 1941, it having been proved that the accused continued said acts. The order very aptly contains these words: "if circumstances so warrant." During the disorderly situation which prevailed at the time of the war and the Japanese occupation, Maria and her children, in their quest for safety, had to evacuate from Mandaluyong, Rizal, where they were living, to Santa Maria, where she could not help seeing Juana with Felipe. But the fact is they never lived in the same house as claimed by Juana. It is easy to understand that during that perilous time she felt restrained from taking judicial action against the defendants, as she was worried regarding the safety of her children and of herself. She decided to hold matters in *status quo* until normal times should come. But after the liberation, when peace and order had been restored in Laguna, Maria filed a complaint in the Justice of the Peace court of Santa Maria, which initiated the present case. There is nothing in her acts from which consent to the illicit relations of the defendants could be inferred.

Delay in filing a complaint for adultery or concubinage does not imply consent to or acquiesence in the illicit relations, if there are good reasons for the delay. In the case of Martiga *vs.* Serra *et al* (5 Phil., 34) the offended party did not file the complaint as soon as he learned of the

illicit relations of his spouse in 1899 but in 1904, for the reason that the defendant during the Philippine Revolution of 1899 was a revolutionary officer and the complainant was afraid that he might take vengeance against him by availing himself of his military authority. This delay was not construed by the court as consent.

"2. ID., ADULTERY; CONSENT OF HUSBAND.—The crime of adultery was first committed by the defendants in 1899. The husband commenced no proceeding in court against them until 1904. *Held,* That under the circumstances appearing in the evidence, this delay did not prove that the husband had consented to the adultery of his wife."

In Viada's commentaries on the Penal Code (Vol. 5, pp. 210-211, 5th Edition), the following passages are found:

"CUESTIÓN 9.—*Aun cuando el marido haya continuado viviendo con su mujer y acompañándola al paseo público y al teatro desde la fecha del adulterio hasta veintitantos días después, en que aquélla fué reducida a prisión preventiva en virtud de la querella de adulterio contra la misma interpuesta, ¿deberá inferirse de esos actos del marido el consentimiento de la infidelidad de su mujer y el perdón de la ofensa recibida?*—El Tribunal Supremo ha resuelto la negativa: 'Considerando que por los hechos de continuar la procesada en la habitación de su marido, acompañarla éste en los paseos y teatros después de haber sido sorprendida con el * * * no se infiere el consentimiento de su infidelidad ni el perdón, y menos en el caso presente, cuando ha formalizado querella y continuando ha formalizado querella y continuado siendo parte en la causa, para la imposición de pena, etc.' (S. de 23 de junio de 1874, Gaceta de 5 de septiembre)."

"CUESTIÓN 11. *La contestación dada por un marido a su esposa adúltera, al proponerle ésta la reconciliación, de que 'hiciera lo que le diese la gana que él no se metería en la vida de ella, ni ella en la de él' ¿será sufficiente para estimar el* consentimiento del adulterio, *a los efectos del párrafo segundo del artículo 449 del Código Penal?*—El Tribunal Supremo ha resuelto la negativa: 'Considerando que la contestación que el querellante dió a la propuesta de reconcilación que le hizo la procesada no implica consentimiento a los fines del art. 449 del citado Código, dado que no puede tener ese significado la manifestación de D. * * *, relativa a que la * * *, hiciera en lo sucesivo lo que le diera la gana, pues entendida en su recto sentido, sólo revela el deseo por parte del marido de mantenerse en absoluto alejado de su mujer, etc.' (S. de 28 de febrero de 1906, Gaceta de 26 de noviembre)."

In view of the foregoing, the decision appealed from is affirmed in all its parts, with costs against the appellant. It is so ordered.

Gutierrez David and *De la Rosa, JJ.*, concur.

Judgment affirmed.

[No. 937-R. September 22, 1948]

CONCEPCION CALVO DE AMOR ET AL., plaintiffs and appellants, *vs.* BARBARA PENEYRA ET AL., defendants and appellees.

LACHES; ESTOPPLE; ACTIONS; UNREASONABLE DELAY IN THE ENFORCEMENT OF A CLAIM.—The unexplained failure of the defendants, during the span of 14 years, to move for the cancellation

of the tax declaration in the name of A, had placed the defendants in estoppel by laches. Unreasonable delay in the enforcement of a claim is strongly persuasive of a lack of merit, since it is human nature to assert a right most strongly when first invaded. * * * Stale claims are, therefore, not favored by the courts. (Buenaventura *vs.* David, 37 Phil., 435.) Inexcusable delay in asserting a right and acquiescence in existing conditions are a bar to a legal action. (Tuason *vs.* Marquez, 45 Phil., 303.)

APPEAL from a judgment of the Court of First Instance of Ilocos Sur. Blanco, J.

The facts are stated in the opinion of the court.

Juan Amor for appellants.
F. V. Vergara for appellees.

PAREDES, *J.:*

Pantaleon Peneyra, by virtue of the power of attorney Exhibit A, dated August 15, 1925, granted him by his brother Faustino Peneyra, conveyed to the plaintiff, Mrs. Concepcion Calvo de Amor, real properties declared in the name of said Faustino and described in the deed of sale Exhibit 3, dated February 1, 1926, in payment of a printing press belonging to said Mrs. Amor. The residential lot described in the complaint, now claimed by Mrs. Amor to be her own, was not included in Exhibit 3, because Pantaleon Peneyra and Barbara Peneyra requested Mrs. Amor not to do so, as Barbara had promised to repurchase it for the sum of ₱500, as soon as she received money from her son in Hawaii, and in order to avoid the necessity of executing a deed of repurchase and further expenses. Pantaleon and Mrs. Amor subscribed to an affidavit of transfer (provincial form No. 9) in the office of the provincial assessor of Ilocos Sur. From the year 1931 until the rendition of the decision in this case by the court below, Mrs. Amor had been in possession of the residential lot, declared it in her name (Exhibits B and C) and paid the corresponding taxes yearly (Exhibits D and E). Galicano Calvo, brother of Mrs. Amor first took charge of the lot and was succeeded, upon his death, by Sinforoso Quilala in the same capacity. In 1925, upon instructions of Mrs. Amor, Quilala wanted to erect a house on the lot, but Barbara, claiming ownership of the land, prevented Quilala from doing so, for which reason plaintiffs filed an action and secured a writ of preliminary injunction in the court below, against defendants. That was the first time the defendants ever claimed ownership of the land and protested its occupation.

The defendants, on the other hand, alleged that in 1925, Barbara bought the lot from her brother Faustino, on which she constructed a house destroyed by bombs in 1945. Faustino stated that he did not authorize his brother Pan-

taleon to sell the residential lot to Mrs. Amor, by virtue of Exhibit A. Defendants also presented Exhibits 2 and 2–B, real property tax receipts, dated December 26, 1945 and January 21, 1946, in the name of Barbara Peneyra, respectively, and Exhibit 4, a certification of the municipal treasurer of Lapog, stating, among others, that Barbara "had a house built on her lot," which was destroyed during the bombing in said municipality.

Upon this evidence, the lower court rendered judgment dismissing the complaint and declaring the defendants owners of the lot under consideration, against which the plaintiffs interposed this appeal and assigned four alleged errors affecting the sufficiency of the evidence to sustain the judgment.

The evidence of record does not support appellee's contention that Barbara purchased the said lot from her brother, Faustino. Having been a sale of real property, it is quite strange that no writing of any kind had been presented to prove its existence. And stranger still, is the fact that notwithstanding the allegation in their amended answer that the ownership of the said lot was "confirmed and evidenced by a public instrument duly executed and ratified in accordance with law," no efforts had been made by defendants to produce said instrument. To prove prior possession, Barbara testified that she had constructed a house on this lot. It appears, however, that her house was erected on an adjoining lot, west of the lot in question. And in that house she had been living with her husband until his death. Faustino admitted that the house erected on the questioned lot belonged to his father Gavino, and that it was the same house where he had been living before going to Cagayan. Benigno Esguerra, a respectable old man (71) and a disinterested witness in this case, declared that Barbara never had a house on the questioned lot, but on an adjoining one in the west, and that her house had been dismantled ten years ago. And if Barbara had once lived in the house of Faustino, it was merely in the capacity of a care-taker thereof.

The failure to include this residential lot among the properties described in Exhibit 3, does not have much significance, taking into account, not only the reasons adduced by the plaintiffs for not doing so, but also because such omission was supplied by the acts of the parties subsequent to the execution of said document. The Court has no reason to doubt the veracity of Mrs. Amor when, explaining the non-inclusion of this lot in Exhibit 3, she said: "porque pedían permiso para poder recobrar ese solar, y dijeron ellos: de todos modos se queda ese poder en Vd. y no vamos ya incluir en la escritura este solar para no cansarnos en redactar otra escritura, y por mi con-

fianza, yo accedí," which request had been made, according to said Mrs. Amor by Barbara herself. Mrs. Amor's statement is further strengthened by the fact that both Pantaleon, as duly authorized vendor of the said lot, and said Mrs. Amor, as the purchaser thereof, had signed in 1931 an affidavit (provincial form No. 9), declaring the ownership of this lot in favor of Mrs. Amor, for the sum of ₱500, after having presented to said official the power of attorney, Exhibit A. This affidavit, destroyed during the war, and its existence not having been disproved by the defendants, is deemed a sufficient memorandum under the law of the purpose of conveying the ownership of the lot to the plaintiffs. That Pantaleon had the intention of transferring this residential lot, is clearly manifested by Exhibit A, which partly says: "incluyendo terrenos *urbanos* y rústicos de mi propiedad, amillarados a mi nombre." This lot was the only urban land then belonging to Faustino and assessed in his name. Notwithstanding the blood relationship, which is quite distant (third cousins), existing between Mrs. Amor and the provincial chief deputy assessor Encarnacion, who testified on the execution of the said affidavit, we see nothing in the record which would indicate that the latter had misrepresented the truth.

This lot had been in possession of Mrs. Amor continuously, peaceably, openly and in the concept of owner, from 1931 until the complaint was filed in 1945, and Mrs. Amor had been paying yearly the corresponding taxes therefor. This fact alone would entitle her to the absolute ownership of the land by prescription. The unexplained failure of the defendants, during the span of 14 years, to move for the cancellation of the tax declaration in the name of Mrs. Amor, had placed the defendants in estoppel by laches. "Unreasonable delay in the enforcement of a claim is strongly persuasive of a lack of merit, since it is human nature to assert a right most strongly when first invaded. * * * Stale claims are, therefore, not favored by the courts." (Buenaventura *vs.* David, 37 Phil., 435.) "Inexcusable delay in asserting a right and acquiescence in existing conditions are a bar to a legal action." (Tuason *vs.* Marquez, 45 Phil., 303.)

The judgment appealed from is, therefore, hereby reversed. The Court declares the appellants Concepcion Calvo de Amor and Juan Amor absolute owners of the lot under consideration, and further declares the writ or preliminary injunction definite, without costs. For lack of merits, the appellants' claim for damages is dismissed. So ordered.

Labrador and *Reyes, JJ,* concur.

Judgment reversed.

[No. 1567-R. September 22, 1948]

GAW SIN GEE, plaintiff and appellant, *vs.* THE MARKET MASTER OF THE DIVISORIA MARKET and FORTUNA M. TORRES, defendants and appellees.

1. COURTS; JUDGMENTS; COURT OF APPEALS; NATURE OF ITS DECISIONS.—It is true that decision of this court do not constitute jurisprudence (Vda. de Miranda *vs.* Imperial, G. R. No. 49060, promulgated February 28, 1947), but as recognized in the same case, the pronouncement of this court may lay down the norm of conduct to be followed while no definite or final pronouncement by the Supreme Court on the question has been made.

2. ACTION; COMPLAINT; RELIEF TO WHICH PLAINTIFF IS ENTITLED; FACTS ALLEGED AND PROVEN, NOT WHAT PRAYER STATES, DETERMINE THE RELIEF DUE PLAINTIFF; "COERCIVE RELIEF".—It has been the consistent ruling in this jurisdiction, under Section 126 of the former Code of Civil Procedure, which is the basis of the present rule, that the plaintiff is entitled to such relief as the facts proven may warrant for the reason that the prayer for relief, though part of the complaint, is no part of the cause of action (Moran on the Rules of Court, Vol. 1, p. 574, and cases cited). The present rule extends that right to any party in the action, even if that party has not demanded such relief in his pleadings. The case of Runkin, Conkey Construction Co. *vs.* Pennsylvania Turnpike Commission, 3 Fed. Rules Service, p. 515, cited in Moran on the Rules of Court, p. 575, which is in point to the case at bar, holds that "coercive relief may be granted in an action for declaratory judgment if the facts show that plaintiff is entitled to such relief."

3. ID.; ID.; ISSUES IN AN ACTION, RAISED BY ALL PLEADINGS THEREIN. —Granting that the plaintiff limited the issue in his pleadings to the right of the defendant market master to eject him from the stalls in question, this did not prevent any party from raising any other issue of fact or of law. Under the rule and policy of avoiding multiplicity of issues, it was proper that the intervenor should raise the issue as to whether or not she is entitled to enter the possession of the stalls and to demand the relief necessary to enjoy the said right. With the presentation of the answer in intervention, the issues are not only those raised in plaintiff's answer. The issues are not raised by one party's pleadings alone, but by all the pleadings in the action.

4. LEASE; MARKET CODE; LEASE OF MARKET STALLS; NATURE AND EXTENT OF RIGHTS OF LESSEE.—Notwithstanding the provision in the market code to the effect that leases are to be understood as continuous, the *right to revoke the lease of a stallholder is specifically and expressly reserved to the City Mayor for any reasonable or just cause or for any violation of the market code*, or of any rules and regulations relating to the administration of public markets, and it is further expressly provided that the rentals shall be paid daily. This power of the Mayor over stalls conclusively shows that the lessee of a stall is not like the lessee of any property. He acquires no right to the stalls, but is a mere occupant during good behaviour. He is only a mere licensee, acquiring no lessee's rights to the stall (Rose *vs.* Baltimore, 51 Md. 256, 270, 30 Am. R. 307; J. W. Hutchins *vs.* Town of Durham, 118 N.C. 457; 24 SE 723, 32 L.R.A. 706). It is clear, therefore, that appellant's rights

as a stallholder can not be compared to those of a lessee of any private house, building, or tenement, for which the law prescribes the remedy of forcible entry and detainer, in accordance with the rules of court.

5. ID.; ID.; CANCELLATION OF LEASE OF MARKET STALLS; ADMINISTRATIVE DUE PROCESS IN INDUSTRIAL DISPUTES INAPPLICABLE.—The appellant's theory that the administrative due process required in cases pending before the Court of Industrial Relations should govern in cases for cancellation of leases under the market code is inacceptable, for the latter, although named leases, are mere licenses which can not be compared to the rights of laborers in industrial organizations. The establishment and regulation of public markets are clearly an exercise of the police power of the State expressly delegated to municipal corporations (43 C. J. 391–392.) To render said administration or regulation subject to the same limitations or requirements in connection with private property rights would be giving a mere license to market stalls a scope beyond its legal limitations.

APPEAL from a judgment of the court of First Instance of Manila. Peña J.

The facts are stated in the opinion of the court.

Quisumbing, Sycip & Quisumbing for appellant.

Pedro C. Mendiola for appellee Torres.

City Fiscal Jose P. Bengzon and *Assistant City Fiscal Nañawa for* appellee Market Master.

LABRADOR, *J.:*

This is an appeal from a judgment of the Court of First Instance of Manila, declaring the intervenor Fortunata M. Torres the lawful occupant of Stalls Nos. 1420–1423 of the Divisoria Market, Manila, and ordering the plaintiff to vacate the same and denying his petition for injunction. The complaint alleges that the plaintiff is the lessee of the said stalls and has been in occupation thereof for several years, complying with all the provisions of the market code and other ordinances, and with the rules and regulations regarding the administration of public markets; that the defendant market master, unreasonably and without just cause, arbitrarily and unlawfully declared the stalls leased by him vacant for the reason that they were found occupied by dummies; that the threatened ejection of the plaintiff from the stalls is unlawful, and the plaintiff is entitled to an injunction to restrain the defendant from forcibly ejecting him therefrom for the reason that the defendant market master has no power to revoke plaintiff's lease thereon, and for the further reason that plaintiff, as lessee, may not be ejected therefrom, except by proper ejectment proceedings filed in the courts of justice; that if any ordiance authorizes the revocation of his lease after an administrative investigation, no such investigation or hearing was ever had or a notification thereof made, and consequently a judicial review of the administrative finding becomes proper and necessary to secure plaintiff's right to

due process of law. On the basis of the above allegations, the complaint prays that a writ of preliminary injunction issue, prohibiting defendant market master from forcibly ejecting the plaintiff from the market stalls in question, and, after trial, that such injunction be made permanent.

The defendant answered the complaint, alleging that the plaintiff was not conducting the business in the stalls in question personally, and was employing unauthorized persons to conduct business therein; that in giving notice to the plaintiff to vacate the stalls, he was merely acting under the orders of the mayor of the City of Manila. By way of special defense, he alleged that the plaintiff agreed in his application for the stalls to personally conduct his business and be present at the stalls every day, and not to permit another person to conduct the business therein, and that a violation on his part, or on that of his helpers, would be sufficient cause for the revocation of the lease and the consequent leasing of the stalls to other applicants; and that pursuant to the powers granted him by the market code, the mayor of the city of Manila had declared aforesaid stalls vacant, after investigating the matter and finding that the plaintiff had committed a breach of the conditions of the lease and had violated the provisions of the market code.

Upon authorization of the court, Fortunata M. Torres intervened and filed an answer, joining the defendant market master in the allegations of his answer and alleging as affirmative defense that the stalls in question had been awarded to her by the city of Manila on September 30, 1946; that her right to said stalls was confirmed after investigation of the matter by the authorities of the city of Manila, and that the plaintiff is not the rightful occupant of the market stalls; and that she had paid the rentals thereon up to and including December 31, 1946. She further invokes the provisions of Republic Act No. 37, which gives preference to Filipino citizens in the occupation of market stalls.

After trial the Court of First Instance of Manila rendered judgment finding that the plaintiff had failed to attend personally to his business and to be present at the stalls daily, and that the revocation of the lease in favor of Gaw Sin Gee is authorized by Section 48 of the market code, and that no evidence having been presented that the adjudication of said stalls to intervenor Fortunata M. Torres is illegal, the provisions of the market code must have been followed in said adjudication. As a consequence it declared the intervenor Fortunata M. Torres the lawful occupant of the stalls in question and ordered the plaintiff to vacate them. The order of preliminary injunction was also lifted.

Against this judgment the plaintiff has prosecuted this appeal, making the following assignments of error: (1)

that the judgment of the lower court does not conform to the pleadings and the proofs, and is not in accord with the theory of the action upon which the pleadings were framed and the case was tried; (2) that the lower court erred in not holding that the appellee market master of Divisoria Market has no power to revoke leases to market stalls, as this authority pertains to and can be exercised only by the mayor of the city of Manila under the provisions of the market code, Ordinance No. 2898, section 25, Cf. 12(a); (3) that it erred in not holding that—the establishment and maintenance of public markets being a private and corporate function (as distinguished from public or governmental function) of the city of Manila, and the city of Manila having entered into the contract of lease of the market stalls in its private or corporate capacity (as distinguished from its public or governmental capacity), and therefore bound by and liable to ordinary judicial processes governing contracts entered into by private corporations and natural persons—the appellee market master and even the mayor of the city of Manila can not revoke a contract of lease to a market stall and forcibly dispossess the lessee without proper ejectment proceedings filed in the courts of justice; (4) that—assuming that an ordinance provides for an administrative investigation by the mayor of the city of Manila as to the existence of just or reasonable cause for the revocation of a lease to a market stall, and assuming further that such administrative investigation can validly dispense with a judicial action for ejectment—the lower court erred in not holding that no administrative investigation was conducted in this case in a manner consonant to and in pursuance of the appellant's constitutional right of due process in such administrative investigation; and (5) that it erred in denying the appellant's motion for new trial based on the insufficiency of the evidence to justify the judgment of ejection—granting that a judgment of ejection may be legally entered in an injunction case.

While this case was under study and consideration by the Fifth Division of this court, the constitutionality of Republic Act No. 37, Department of Finance Order No. 32, and Ordinance No. 3051 of the city of Manila was challenged in the Supreme Court. In view of the fact that the decision in said cases may affect the rights of the petitioner and appellant, who is a Chinaman, belief was entertained by the members of the Division before which the case was pending, that it might be better to await the final resolution by the Supreme Court of the above-mentioned cases. Prior to doing so, however, the parties were asked to submit their opinion on the projected suspension of the case. They did as requested, but each of them expressed the desire that this case be decided on the merits.

Until now, however, the Supreme Court has not decided the question of constitutionality either of Republic Act No. 37, or of Ordinance No. 3051 of the City of Manila. While the question of the right of the petitioner to remain in the stalls subject of the action has not been definitely decided, there are two positive reasons why it is desirable that the issues presented on this appeal be passed upon. In the first place, as appellant points out, the provisions of Republic Act No. 37, Department of Finance Order No. 32, and City Ordinance No. 3051 of Manila were sought to be enforce only on January 21, 1948, while the petitioner herein was ejected prior to said date, i.e., long before the said law and ordinance were enforced. While, therefore, petitioner may not, from January 21, 1948, have any right to the stalls, he may have had, by tolerance of the State, such right prior to January 21, 1948. And if he had such right, as he claims, he may only be deprived thereof pursuant to existing provisions of law. So that it would still be necessary for this court to decide and determine whether said provisions of law have been followed and complied with in depriving the petitioner of his right. In the second place, there is the claim on the part of the petitioner of forcible ejection, which, if found to be justified, may entitle him in equity to an award of damages. However flimsy this claim may appear to be, it still is our duty to pass judgment thereon.

A further excuse for deciding all the issues raised on this action lies in the fact that there are some questions of public importance involving "a determination of public rights or interest under conditions which may be repeated at any time," the resolution of which will be of practical interest to the parties in this case and to all others similarly situated. Some of these questions are of public importance, such as for instance, the validity of the proceedings provided in the market code of the City of Manila for the revocation of licenses to occupy stalls, the necessity and character of the investigation or hearing necessary to such revocation, etc. It is true that decisions of this court do not constitute jurispruduence (Vda. de Miranda *vs.* Imperial, G. R. No. 49060, promulgated February 28, 1947), but as recognized in the same case, the pronouncement of this court may lay down the norm of conduct to be followed while no definite or final pronouncement by the Supreme Court on the question has been made.

For all the above reasons and considerations, we feel obliged to pass upon and resolve all the issues presented on this appeal.

It is claimed in the first assignment of error that the judgment of the lower court, in so far as it orders the plaintiff to vacate the stalls, is not in accordance with the theory on which the action is based and tried, that no

judgment of eviction can be rendered on the pleadings, which make out no action for eviction, and that the judgment of eviction is an adjudication of matters beyond the issues. The answer submitted by the intervenor Fortunata M. Torres alleges that the stalls subject of the action had been awarded to her since September 21, 1946, that notice of such award was received by her on September 30, 1946, and that she had paid the rentals thereon up to and including December 31, 1946. At the trial these allegations were proved. It is true that the prayer contained in the answer in intervention makes no specific request for a judgment to order the plaintiff to vacate the stalls, but this deficiency is made up by the general prayer "for such other relief consistent with law and equity." (Record on Appeal, pp. 18–19.) It is the considered opinion of this court that if the stalls in question had been awarded to the intervenor and that she had paid rentals thereon, she was entitled, at the time she filed her answer in intervention on January 13, 1947, to have the plaintiff vacate the stalls, so that she may occupy them. It has been the consistent ruling in this jurisdiction, under section 126 of the former Code of Civil Procedure, which is the basis of the present rule, that the plaintiff is entitled to such relief as the facts proven may warrant for the reason that the prayer for relief, though part of the complaint, is no part of the cause of action (Moran on the Rules of Court, Vol. I, p. 574, and cases cited). The present rule extends that right to any party in the action, even if that party has not demanded such relief in his pleadings.

The contention of the plaintiff is that since the appellant went to trial solely on the issue as to whether the defendant market master had authority to eject him from the market stalls, and that as there was no ejectment proceedings before the court, part of the judgment objected to is beyond the court's jurisdiction. Such may have been the theory upon which the plaintiff went to trial, but when the intervenor alleged that she had been awarded the stalls already and that she had paid the rentals thereon, and when during the trial she submitted the written award (Exhibit 1) and the receipts covering the payment of the rentals from September 30, 1946, to December 31, 1946 (Exhibit 3), and from January 1, 1947, to February 28, 1947 (Exhibit 2), it no longer became a right but a duty on the part of the court to grant the remedy consistent with the facts of the award of the stalls to intervenor and the payment of the fees therefor by her. The notice of award and the receipts covering the payment of the market fees were not submitted just in denial of the plaintiff's right to continue in the stalls, without the judicial proceedings that he claims to be entitled to; by the allegations of the answer in intervention and by the evidence submitted in support thereof, the issue necessarily

arose as to whether or not she had a right to a judgment ordering the appellant to vacate the stalls in question so that said intervenor may occupy the same, pursuant to the award, and because of the payment of the fees. A case in point is the case of Hunkin, Conkey Construction Co. *vs.* Pennsylvania Turnpike Commission, 3 Fed. Rules Service, p. 515, cited in Moran on the Rules of Court, Vol. 1, p. 575. This case holds that "coercive relief may be granted in an action for declaratory judgment if the facts show that plaintiff is entitled to such relief."

Granting that the plaintiff limited the issue in his pleadings to the right of the defendant market master to eject him from the stalls in question, this did not prevent any party from raising any other issue of fact or of law. Under the rule and policy of avoiding multiplicity of issues, it was proper that the intervenor should raise the issue as to whether or not she is entitled to enter the possession of the stalls and to demand the relief necessary to enjoy the said right. With the presentation of the answer in intervention, the issues are not only those raised in plaintiff's complaint, but also those raised in intervenor's answer. The issues are not raised by one party's pleadings alone, but by all the pleadings in the action. We, therefore, find no merit in the first assignment of error.

The second assignment of error is based on the alleged lack of authority on the part of the market master to revoke the lease to the stalls in question, as such authority pertains to and can be exercised only by the mayor of the City of Manila. The evidence of record does not support this assignment of error. Exhibit 1 submitted by the intervenor is to the effect that the city mayor, in a letter dated September 4, 1946, had adjudicated the stalls in question to Fortunata M. Torres. This adjudication presupposes the revocation of the right of the appellant to the said stalls. The letter of September 29, 1946, sent by the market master to the plaintiff-appellant in this case, which evidently must have been the basis of apellant's assignment of error, must have been based on the adjudication made by the mayor on September 4, 1946, although this letter does not say so. The second assignment of error is, therefore, overruled.

Under the third assignment of error, the appellant claims that neither the market master, nor even the mayor of Manila, can revoke a contract of lease to a market stall and forcibly eject the lessee without proceedings in the courts of justice. The court does not fully comprehend the purpose of the appellant in inserting the word "forcibly" in his assignment of error, for it does not appear, either in the pleadings or in the evidence submitted, that a forcible ejectment was ever threatened or contemplated by the city authorities. We, therefore, prefer to discuss this assign-

ment of error without the qualification implied by the said word, with the understanding that the ejectment should be effected without the use of unnecessary violence, and with only such amount of force as is necessary to remove his goods from the stalls and deprive him of the possession and occupation of the stalls. The reasoning upon which this assignment of error is based is to the effect that the lease of a market stall is not one of the governmental functions of the City of Manila; that the revocation of the contract for the lease of a stall is a justiciable controversy, and that, therefore, the mayor may not revoke a lease and eject the lessee against his will, because he would then become both a judge and executioner in his own cause; and that no ordinance exists substituting the mayor for the courts in the determination of justiciable issues, and that if such ordinance ever existed then it would be null and void as contrary to the due process of law of the Constitution. The argument appears to be plausible, but the premises are not correct. It is true that the ownership and maintenance of public markets may not be a governmental function; however, there are certain phases of market administration, or rather market regulation, which more properly belongs to the police power (Dillon, Municipal Corporations, Volume II, section 708, p. 1080). Such are those that refer to the maintenance of cleanliness and order within public markets, which fall within the control and jurisdiction of the City Health Officer (sections 3, 10, 11, and 12, Ordinance No. 2898). As to market stalls, it is to be noted that their adjudication or assignment and allocation is placed directly in the chief of the market division, who in turn falls under the direction and control of the City Health Officer as chief of the Department of Health and Welfare of the City of Manila (sections 10 and 11, Ordinance No. 2898).

A market stall is not like a private building leased to a private person for a private purpose, which the lessee uses in the manner he likes. Not so with the market stall. It exists for the convenience of the public, which, during all hours of the day, goes to the public markets for the daily needs of life—for food, clothing, and other various goods or articles necessary to meet the requirements of daily life. In cities or big centers of population, public markets affect the daily life of the community even more than public utilities. As people buy their food daily in the public markets, it is imperative that the regulation of business therein, like the regulation of its sanitary conditions, be under constant supervision and control, otherwise the continuity of the supply of the essential needs of daily life maybe disrupted. Hence it is that, notwithstanding the provision in the market code to the effect that leases are to be understood as continuous, *the right to revoke the lease of a stall-*

holder is specifically and expressly reserved to the city mayor for any reasonable or just cause or for any violation of the market code, or of any rules and regulations relating to the administration of public markets, and it is further expressly provided that the rents shall be paid daily. This power of the mayor over stalls conclusively shows that the lessee of a stall is not like the lessee of any property. He acquires no right to the stall, but it a mere occupant during good behaviour. He is only a mere licensee, acquiring no lessee's rights to the stall (Rose *vs.* Baltimore, 51 Md. 256, 270, 30 Am. R. 307; J. W. Hutchins *vs.* Town of Durham, 118 N. C. 457; 24 SE 723, 32 L. R. A. 706). This nature and character of market stalls has evidently been overlooked by counsel for appellant in his argument on the third assignment. It is clear, therefore, that appellant's rights as a stallholder can not be compared to those of a lessee of any private house, building, or tenement, for which the law prescribes the remedy of forcible entry and detainer, in accordance with the rules of court.

Neither do the existing provisions of law support the appellant's contention. The power of the municipal board of the City of Manila to establish and maintain public markets is specifically granted by section 2444(z) of the Revised Administrative Code. The aforementioned provision considers the establishment and maintenance of public markets as a legislative power delegated thereto by the legislature of the State. In pursuance of this grant of legislative power, the municipal board of the City of Manila has promulgated its market code (Ordinance No. 2898), the pertinent provisions of which are sections 12, 17, 22, 28, 48, and 49. Section 17 provides a form which the applicant for a stall is required to sign under oath, and there is an express promise included therein that the stallholder shall, even if he engages helpers, nevertheless personally conduct his business and be present at the stall *everyday.* The application further contains the condition that any violation by the stall holder of the conditions shall be sufficient cause for the market authorities to cancel the contract of lease and *to declare the stall vacant, so that the same may be leased to other applicants.* In line with the purpose of the ordinance to require stallholders to personally conduct their business therein, it is provided in section 22 that if the stallholders are not in reality the persons who directly occupy said stalls, the lease or leases thereof shall be cancelled and the stalls shall be declared vacant. It is also expressly provided in section 28 that a lessee must *occupy,* administer, and be present personally at his stall or stalls, and that the appointment of helpers shall not relieve the stallholder of the duty of personally administering the business therein and of being *personally present at his stall or stalls.* In section 48 it is expressly

provided that any violation of any provision of the market code by a stallholder or his helper shall be sufficient cause for the revocation of the lease of the offender and his *ejectment* from the stalls or booths leased to or occupied by him. It is also to be noted that any stallholder not satisfied with the decision or action of any market master may appeal the same to the mayor of the City of Manila, whose decision or action on the premises shall be final, except as may otherwise be decreed by competent legal authority.

The provisions of the market code not only form part of the lessee's contract with the city; they are limitations upon the license granted him to occupy and operate the stall. They are not only part of the contract of the stallholder with the city; they are legal provisions with the full force and effect of a law passed by the legislature of the State, as the same have been promulgated by virtue of the authority expressly granted the municipal board of the City of Manila. If for any of the causes mentioned in the ordinance the mayor revokes the license of a stallholder, in pursuance of the express provision of the said ordinance, can it be seriously contended that in order to enforce the provisions of the market code to eject a stallholder, the mayor should first resort to the courts of justice? The argument of appellant would reduce executive officials of the Government to the category of private citizens, if in order to enforce the express provisions of the law, which they are supposed to execute, they still have to resort to the courts. Such an argument is absurd. Such an argument would make of the highest and strongest department of the Government, the Executive Department, subordinate to its weakest department, the Judicial Department. If for every violation of the express provision of the law executive officials must sue in the courts of justice to enforce such express provision, on the excuse of the existence of justiciable controversy, the executive branch of the Government would cease to be what its name implies. Public officers would be impotent to perform their public duties and functions, and even those of urgent nature, only because an unreasonable citizen questions their actions.

The case at bar has been squarely decided in the case of J. W. Hutchins *vs.* Town of Durham, 118 N.C. 457, 24 S.E. 723, 32 L.R.A. 706, where the same question now propounded by the appellant has been forcibly answered in the negative. In that case the Supreme Court of North Carolina held:

"* * *. But markets are necessary to the life of the residents of a municipality, and for that reason it has been held that the right to establish and regulate them was implied in the very creation of such corporations. Having the right to regulate these places for the public good, they would be powerless to carry out that duty if, after the license of an occupant of the stall is revoked or expires,

they do not have the same power, through their lawful officers, to expel him, which an innkeeper or a conductor has to protect the guests or passengers, representing the public, who place themselves under his care. The plaintiff had become a trespasser, not by holding over under any contract which gave him the least interest in the premises, but like one who enters an hotel under an implied license, but forfeits his right to remain by misconduct.

"* * *. On July 10, in pursuance of an order of July 3, 1894, a notice that the stalls would be offered publicly for rent on August 1, 1894, was posted at the market house, and seen by the plaintiff, who was present also when his own stall was rented, and was notified on August 9 to vacate on August 10, 1894. He paid no attention to the notice, and persisted in his refusal to remove his property or leave himself, when the policemen appeared upon the scene at the appointed hour on that day. He suffered them to remove a heavy safe, and to place his fresh beef, after removal, on marble slabs, without assistance, and without a request in relation to the matter. He then placed himself upon his block, which it was necessary to move, and thereby forced the policemen to lift the block up with him on top of it, and carry both out of the way. About the time they reached the place selected for depositing the block, the plaintiff fell off, and caught 'upon his all fours.' In no aspect of the evidence is this either an unlawful expulsion or a lawful expulsion conducted in a manner so unnecessarily violent as to entitle the expelled party to damages, either compensatory or vindictive. Where a guest in an hotel, a passenger on a railway train, or a ticket holder at a theater, creates a disturbance, though either has a right under his contract to remain so long as he acts with due regard to the rights of others, the proprietor, conductor, or manager, or their agents, may use the amount of force necessary to expel. State *vs.* Steele, 106 N.C. 766, 8 L.R.A. 516."

On principle, policy, and authority, therefore, appellant's third assignment of error can not be sustained.

In his fourth asignment of error, appellant argues from the provision of section 22 of the market code providing for the cancellation of leases found, upon investigation, to have been subleased, that prior to a cancellation of his lease, there should have been a hearing, a notice of such hearing, presentation of evidence thereat, sufficiency of evidence to support the cancellation, notice to him apprising him of the reasons for the cancellation, citing in support of his claim the decision of our Supreme Court in the case of Ang Tibay *vs.* Court of Industrial Relations, SC–G. R. No. 46496, 40 Off. Gaz., No. 11, 7th Supp., pp. 29, 35–38. We are not prepared to accept the appellant's theory that the administrative due process required in cases pending before the Court of Industrial Relations should govern in cases for cancellation of leases under the market code, for the latter, although named leases, are mere licenses which can not be compared to the rights of laborers in industrial organizations (*supra*). The establishment and regulation of public markets are clearly an exercise of the police power of the State expressly delegated to municipal corporations (43 C.J., 391–392). To render said administration or regulation subject to the same limitations or requirements in connection with private property rights

would be giving a mere license to market stalls a scope beyond its legal limitations.

The only important question to determine, therefore, is whether the cancellation of the appellant's lease was conducted in accordance with the provisions of section 22 of the market code, which provides cancellation *upon investigation* merely, without specification of the nature and character thereof and the proceedings therein. The record discloses that a market investigator had been observing the persons actually occupying the stalls leased to the appellant and conducting business in them for about a month and a half, and that for that length of time appellant was never seen at said stalls; that the person actually occupying the stalls was Go Chut, whose helpers were either Sy Chit or Felipe Sy, and that no notice or warning could be served to the appellant, because he was never seen at the said stalls. The appellant has never challenged these facts. We hold that under the circumstances there was sufficient investigation justifying a cancellation, pursuant to the provisions of the market code.

The fifth assignment of error is a mere consequence of the first four, and our resolution on these renders its consideration unnecessary.

For the foregoing considerations, this court finds that the judgment appealed from is in accordance with the law and the evidence adduced, and said judgment is hereby affirmed, with costs against the appellant. So ordered.

Paredes and *Barrios, JJ.*, concur.

Judgment affirmed.

[No. 1349-R. September 27, 1948]

PONCIANO TUMBUCON, plaintiff and appellee, *vs.* FELICIDAD LIBERATO and GREGORIO SOLETA, defendants and appelants.

EVIDENCE; CONTRACT; PAROL EVIDENCE; ADMISSIBILITY OF PAROL EVIDENCE TO SHOW TRUE CHARACTER OF WRITTEN INSTRUMENT.—Parole evidence is admissible in support of allegations that an instrument in writing, purporting on its face to transfer absolute title to property, or to transfer the title with the right to repurchase under specified conditions reserved by the vendor, was in truth and in fact given merely as security for the repayment of a loan (Cuyugan *vs.* Santos, 34 Phil., 100); and to justify the conclusion that a contract is one of mortgage and not a sale, there must be something in the language of the contract *or in the conduct of the parties* which shows clearly that they intended the contract to be a mortgage and not a *pacto de retro.* (Tolentino and Manio *vs.* Gonzales Sy Tiam, 50 Phil., 558.)

APPEAL from a judgment of the Court of First Instance of Cavite. Alfonso, J.

The facts are stated in the opinion of the court.

Luis Buenaventura for appellants.
Vicente Perrin for appellee.

PAREDES, *J.:*

This is an appeal from a judgment of the Court of First Instance of Cavite, declaring the transaction described in Exhibit A entered into between plaintiff Ponciano Tumbucon and Pedro Esteban on May 6, 1940 to be a contract of mortgage; declaring null and void the sale made by defendant Felicidad Cruz in favor of her co-defendant Felicidad Liberato on August 28, 1943; ordering Felicidad Liberato to pay the plaintiff the sum of ₱30 monthly as rentals from July 19, 1946 to the time the property is returned to plaintiff; ordering the register of deeds of the Province of Cavite to cancel T.C.T. No. A–237 in the name of Felicidad Liberato and to issue another in the name of the plaintiff; annulling tax declaration No. 21419 in the name of Felicidad Liberato, and authorizing the issuance of a new one to plaintiff, with costs against the defendants.

Appellants alleged seven errors. The basic issue, however, is the determination of the character of the transaction involved in Exhibit A, whether it was a loan with guaranty (mortgage) or sale with the right to repurchase.

On May 6, 1940, Ponciano Tumbucon executed and ratified Exhibit A before notary public Juan F. Aguilar, whereby he sold his lot and house situated in San Antonio District, City of Cavite, in favor of Pedro Esteban, reserving his right to repurchase the property within the period of one year and stipulating therein that plaintiff could remain in possession of the property, as lessee, upon payment of ₱3 a month as rentals. On December 10, 1941, Esteban was killed during an air-attack on Cavite Navy Yard. Felicidad Cruz, widow of the deceased, then in need of money to support her children, looked for Tumbucon in order to resell him the property, but he was in another province. The niece of the plaintiff named Magdalena de la Vega, who was then occupying the premises, as caretaker thereof, was requested to repurchase the property by Felicidad Cruz. Magdalena, in turn, proposed the sale of the property to Felicidad Liberato; otherwise a certain Chinaman would acquire it. Felicidad Cruz instituted special proceeding No. 32 in the proper court, whereby she was appointed guardian of the persons and estate of the minor heirs. The court, having granted the corresponding authority to sell or resell the property, Felicidad Cruz, as widow and as such guardian, on August 28, 1943 sold the property in question to defendant Felicidad Liberato, for the sum of ₱414, by virtue of a deed of sale Exhibit D, duly approved by the court. On September

1, 1943, the register of deeds of Cavite cancelled T.C.T. No. 5439 in the name of Ponciano Tumbucon and, in lieu thereof, issued T.C.T. No. A–237 in the name of Defendant Felicidad Liberato de Soleta (Exhibit 9). In November, 1945, Tumbucon saw Felicidad Liberato with the intention of repurchasing the property. The latter told him that she precisely redeemed the property in order to return it to him ("Sí, para devolverla a tí"), but she could not do so at that time because she had not found a place to go. Later, however, Felicidad Liberato changed her mind and refused to resell the property to the plaintiff. So the present action was instituted on July 19, 1946.

It was held that parole evidence is admissible in support of allegations that an instrument in writing, purporting on its face to transfer absolute title to property, or to transfer the title with the right to repurchase under specified conditions reserved by the vendor, was in truth and in fact given merely as security for the repayment of a loan (Cuyugan *vs.* Santos, 34 Phil., 100); and to justify the conclusion that a contract is one of mortgage and not a sale, there must be something in the language of the contract *or in the conduct of the parties* which shows clearly that they intended the contract to be a mortgage and not a *pacto de retro.* (Tolentino and Manio *vs.* Gonzales Sy Tiam, 50 Phil., 558.)

Certainly, on the face of the contract Exhibit A, there is not the slightest indication that it was a mortgage; but the acts and conduct of the parties simultaneous and subsequent to the execution thereof lead us to the conclusion that the intention of the parties was to enter into an agreement other than what the said document purports to be.

(1) The plaintiff, even after the execution of Exhibit A, through his niece Magdalena de la Vega, had been in continuous possession of the property, as owner, with the knowledge and consent of the deceased creditor Esteban, and, after his death, of his legal heirs. The fact that plaintiff and his niece did not pay rents to the said Esteban or to his legal heirs, shows that the condition in the contract which provides for the payment by the plaintiff of the sum of ₱3 a month as rentals, was merely to cover up the interest of ₱100 which the plaintiff had paid and included in the total obligation of ₱400. The assertion of the plaintiff that he did not pay for his occupation of the property, after it was mortgaged, was not controverted by the defendants, or by any competent evidence. That Esteban and his heirs did not exercise right of dominion over the property, is likewise manifested by the fact that the ownership of the land was not consolidated in the name of Esteban or his heirs, even after the alleged time to repurchase had elapsed. The transfer certificate of title No. 5439

had always been in the name of the plaintiff until September 1, 1943, when the appellants thought of securing the title in their own names.

(2) Attorney Aguilar, counsel for the defendant Felicidad Cruz, had, consciously or unconsciously, considered and acknowledged in his pleadings in the guardianship proceeding, civil case No. 32, that Exhibit A was a *"credit* for the sum of ₱400 in favor of the deceased Pedro Esteban." The defendant Felicidad Cruz who had also considered Exhibit A as a mortgage or *"sanglá"*, testified that in May, 1940, the alpintiff was living in *his own house,* the one sold by her to defendant Felicidad Liberato.

"JUZGADO (a la testigo) :

"P. Pero usted dijo que la propiedad esa era de Ponciano Tumbucon. La pregunta es: "Cómo llegó usted a venderla siendo de la propiedad de Ponciano Tumbucon?—R. *Es porque quedó hipotecada a favor de mi esposo Pedro Esteban."* (T. s. n. pp. 33–34.)

The fact that Attorney Aguilar prepared the said document, upon instructions of the deceased Esteban, and declared as a witness of and acted as counsel for defendant Felicidad Cruz in this particular case, reveals the great interest he had in upholding the validity of the document in question.

(3) Defendant Felicidad Cruz, through misrepresentations of appellant Felicidad Liberato to the effect that the latter was plaintiff's relative and that she was authorized to repurchase the property by the latter, was induced to resell the lot to said Felicidad Liberato who assured Felicidad Cruz "que tan pronto llegue Ponciano Tumbucon ella lo revendería a él", from which we may infer that even the defendants did not consider themselves as owners of the property.

(4) The property is a residential lot, containing an area of 191 square meters, acquired by the plaintiff for the sum of ₱477, and a house of strong materials situated in the City of Cavite, and both house and lot had a market value of ₱2,977 before the war. The deed Exhibit A called for the sale of both house and lot for the sum of ₱400 only. This being the case, and considering the fact that the property is in a commercial district of said city, the price paid by Esteban in relation to the value of the property at the time Exhibit A was executed, was grossly low and inadequate.

In the case of Lim *vs.* Calaguas, CA–G. R. No. 762–R, this Court enumerated the circumstances which would serve to test whether a contract drawn in the form of a sale with *pacto de retro,* may be declared to be an equitable mortgage instead. We find that the circumstances set forth in this decision are among those provided in the case just cited.

The appellants contend that the interest of ₱100 paid by plaintiff had not been received personally by the deceased Esteban, but by the latter's relative named Chong. It appears, however, that this Chong negotiated the loan, furnished one-half of the capital loaned, and both she and Esteban demanded the payment of ₱100 as interest from the plaintiff. Plaintiff testified:

"JUZGADO (Al testigo):

"P. Dónde se hallaba Pedro Esteban en ese preciso momento de entregar usted los cién pesos de intereses a la tal Chong?—"R. Estaba en su casa.

"P. De modo que no estaba presente Pedro Esteban cuando usted pagó los cién pesos a Chong?—R. No, señor.

"P. Entónces, no sabía Pedro Esteban que usted pagó esos cién pesos?—"R. Lo sabía, porque entre ellos se habló de eso.

"P. Cuando hablaron los dos—Pedro Esteban y Aling Chong?—"R. El mismo dia.

"P. Estaba usted presente cuando ellos hablaron de ello?—"R. Sí, señor." (T. s. n., pp. 20-21.)

The burden of proof, therefore, that no interest had been paid, directly or indirectly, rests upon the defendants, in the face of plaintiff's assertion that he paid such interest. Indeed, the annual interest paid was highly usurious, for it represented 33 per cent of the capital. However, inasmuch as no relief was asked in connection therewith, and that the trial Court failed to grant such relief, we abstain from considering the penal aspect of this matter.

The transaction being one of mortgage, the defendant Felicidad Cruz had no right to sell the property to her co-defendant Felicidad Liberato, without complying with the law on foreclosure. The sale of the land to Felicidad Liberato was not, therefore, authorized; and whatever benefits she might have obtained by virtue of the documents executed in her favor, are null and void. "The creditor can not appropriate to himself the things held as pledge or under mortgage, nor can he dispose of the same as owner; he is merely entitled, after the principal obligation has become due, to move for the sale of the things pledged, in order to collect the amount of his claim from the proceeds." (Ranjo *vs.* Salmon, 15 Phil., 436.)

The trial court, after declaring that the defendants should pay the plaintiff the sum of ₱30 monthly as rentals covering the period from August 28, 1943 to July 19, 1946, almost three years, and that the plaintiff should, in turn, pay the sum of ₱300, the amount of the loan, to the defendant Felicidad Liberato, as subrogee of Esteban, relieved both parties from their respective obligations and ordered the appellant Felicidad Liberato to pay merely the rentals of the property at the rate of ₱30 a month, from the filing of the complaint until the property is finally vacated by her. This Tribunal expresses its conformity to this ruling,

it being fair and reasonable to both parties, under the circumstances obtaining in this particular case.

Appellant Felicidad Liberato alleges having spent the sum of ₱3,000 in occupation money, for improvements, on the property. It appearing, however, that she bought the property, by making her co-defendant Felicidad Cruz believe, as she did believe, that she (Liberato) was a relative of the plaintiff and that the latter had authorized her to repurchase the property, when in truth and in fact, she was not a relative of the plaintiff and was not authorized by him to make such purchase, said appellant Felicidad Liberato had acted in bad faith and does not have any right to be indemnified for the alleged improvements made on the property.

"Whatever is built, planted, or sown on another's land, and any improvements or repairs made on it, belongs to the owner of the land, subject to the provisions of the following articles." (Art. 358, Civil Code.)

"He who builds, plants, or sows in bad faith on another's land shall lose that which he has built, planted, or sown, without right to compensation." (Art. 362, Civil Code.)

Finding no error in the judgment appealed from, the same is, therefore, hereby affirmed, with costs against the appellants. So ordered.

Labrador and *Barrios, JJ.*, concur.

Judgment affirmed.

[No. 1521-R. September 28, 1948]

SURIGAO EXPRESS COMPANY, plaintiff and appellant, *vs.* REYNALDO P. HONRADO, defendant and appellee

EVIDENCE; BURDEN OF PROOF; FAILURE OF PLAINTIFF TO PROVE ITS CASE.—When the burden of proof is upon the plaintiff and the scale shall stand upon an equipoise, with nothing in the evidence which shall incline it to one side or the other, the court will find for the defendant (III Moran 562; 23 C. J., 11-12).

APPEAL from a judgment of the Court of First Instance of Surigao. Bayona, J.

The facts are stated in the opinion of the court.

Montano A. Ortiz for appellant.
Reynaldo P. Honrado for appellee.

LABRADOR, *J.*:

This is an action to recover the amount of ₱100, representing damages caused to a bus of the plaintiff by a collision with a bus of the defendant. The complaint alleges that while the driver of plaintiff's bus was away, driver of defendant's bus drove backwards, hitting plaintiff's bus in the front part, and that the collision was caused by

the negligence and lack of foresight and skill of defendant's driver. The defendant denies these allegations, and claims that the collision was due to the fault of one Pedro Pepino, Jr., plaintiff's inspector, that his truck, in turn, suffered damage in the amount of ₱600, and prays that this amount be adjudged in his favor against the plaintiff. Replying to this counterclaim, plaintiff alleges that as Pedro Pepino was not the authorized driver of the latter's truck, the latter is not responsible for his acts.

After trial the Court of First Instance of Surigao found that it was the plaintiff's truck that had bumped against the truck of the defendant, while the latter was descending slowly on a narrow road near a bridge, as a result of which defendant's truck and trailer suffered damage in the amount of ₱570, and rendered judgment dismissing plaintiff's complaint and sentencing it to pay the defendant ₱570 as damages on his counterclaim. Against this judgment this appeal has been prosecuted, and in this court plaintiff-appellant makes the following assignments of error: (1) that the trial court erred in finding that it was plaintiff's truck that hit defendant's truck; (2) that the trial court erred in rendering judgment against the plaintiff on defendant's counterclaim; and (3) that the trial court erred in not sentencing the defendant to pay the plaintiff the latter's claim for damages.

The evidence shows that in the afternoon of July 26, 1946, the passenger bus of the plaintiff and that of the defendant were making a scheduled run from Surigao to Gigaquit. Plaintiff's bus was being driven by Victor Banaston; while defendant's bus by Cristiniano Palolay. There was competition between the buses of the plaintiff and those of the defendant, and on that day the two buses were racing with each other to get the passengers waiting along the road. When they reached the municipality of Bacuag, several persons on the side of the road waved at the bus of the defendant to stop. It did so, but the passengers refused to ride and waited for the plaintiff's bus and rode therein. Defendant's bus then proceeded ahead, leaving plaintiff's bus behind, and when it reached the Bacuag River, at a place known as Campo, it stopped in order to permit a Chinaman, who was a passenger therein, to get down from the bus. The place where it stopped was the approach to the river and the bridge crossing it, and was, therefore, a downward incline. When the bus of the plaintiff reached that same place, it could not go on and pass defendant's bus, because the latter blocked the way, so it had to stop. Plaintiff's driver began blowing his horn, but to no avail. As defendant's bus did not head the blowing of plaintiff's horn, the inspector of plaintiff, Pepino by name, went to the bus of the defend-

ant. It is not clearly stated what happened, but it appears that defendant's driver went down his bus and, with an open pen knife, chased away said plaintiff's inspector. Plaintiff's driver and his passengers ran away from the bus and stayed in a coconut grove nearby until defendant's driver was pacified. Thereafter, defendant's bus started and the collision between the buses, as already indicated, took place.

The witnesses for the plaintiff claim that after defendant's driver had chased away plaintiff's inspector and as soon as he went back to his bus, he drove it backwards, and the trailer behind defendant's bus collided with the front part of plaintiff's truck. The witnesses for the defendant, in turn, claim that the collision came about when plaintiff's inspector Pepino took the wheel from the driver and bumped plaintiff's truck into defendant's trailer. The testimonies of the witnesses on both sides are in no wise satisfactory. Aside from improbabilities, they abound in contradictions, and as the cross-examinaton has not been intelligent and illuminating on the points at issue, it is difficult to decide which side to believe. Plaintiff's driver says that the defendant's driver back his truck and caused the collision, but it appears from the complaint and from his own testimony that he went down from his own truck, so that he could not have seen how the collision had been caused. When asked about the supposed backward movement of defendant's truck, he spoke in a doubtful manner, saying that "perhaps defendant's driver was in a hurry, and when he started his truck, instead of going ahead it moved backwards." (T. s. n., p. 23). It is hard to believe that defendant's truck made the supposed backward movement, for it is difficult for it to make said operation, as it is admitted that it was on a descent.

On the part of the defendant, it is claimed that Pedro Pepino, Jr., inspector of the plaintiff's bus, grabbed the wheel from the plaintiff's driver and bumped the bus against defendant's trailer. The principal witness to this theory is the conductor of plaintiff's bus at the time of the collision, and we would have taken his story as the correct one had it not been shown that at the time he testified he was no longer employed by plaintiff, while at the trial in the justice of the peace court he was to be a witness for the plaintiff. Besides, according to him, the collision took place as the defendant's bus was going on the ascent, which is contrary to the admitted fact that the collision took place on a descent. The fact admitted by plaintiff's witnesses that defendant's driver went down his bus and chased away Pepino with his open knife would also tend to corroborate defendant's theory, for there seems to have been no reason for defendant's driver to have made the

assault, unless Pepino had committed the act imputed to him by the witnesses for the defendant, that of bumping plaintiff's truck into defendant's bus.

As we have stated above, we are at a loss to determine which of the theories is correct. Under the circumstances, we can do no other than decide the issue by the rule of burden of proof.

> When the scale shall stand upon an equipoise and there is nothing in the evidence which shall incline it to one side or the other, the court will find for the defendant. (III Moran, 562.)
>
> Where the evidence on an issue of fact is in equipoise or there is any doubt on which side the evidence preponderates, the party having the burden of proof fails upon that issue. That is to say, if the evidence touching a disputed fact is equally balanced, or if it does not produce a just, rational belief of its existence, or if it leaves the mind in a state of perplexity, the party holding the affirmative as to such fact must fail. (23 C. J., 11–12.)

The burden of proof in the present case, in so far as plaintiff's cause of action is concerned, lies on the plaintiff just as it also is on the defendant, in so far as the latter's counterclaim is concerned. The alleged negligence of defendant's driver as the direct cause of the damage to plaintiff's bus must be shown by the preponderance of the evidence. Taking into account the fact that the trial judge who heard the witnesses testify also found that the collision was due not to the negligence of the defendant's driver, we hold that no such preponderance has been submitted by plaintiff, and the judgment, in so far as it absolves the defendant from plaintiff's claim, must be affirmed.

As to defendant's counterclaim, we note that defendant's own evidence shows that plaintiff's inspector had taken the steering wheel from the driver and had bumped plaintiff's bus against the rear of the trailer behind defendant's bus. Under this state of the facts, in order that he might recover on his counterclaim, it would be necessary for the defendant to establish that the driving of plaintiff's bus was within the scope of the duties of the said inspector so that the defendant may be held to account therefor (article 1903, par. 4, Civil Code; decision of the Supreme Court of Spain of June 13, 1929, cited in 12 Manresa (4th ed. 166). In this respect, the evidence for the defendant is absolutely silent. Perhaps it might be pertinent to add that we can take judicial notice of the fact that when a driver is employed to operate a vehicle, he has full control thereof, and that an inspector of the bus has no duty, obligation, or authority in so far as the driving of the bus is concerned. As counsel for the appellant correctly argues, the person responsible for the collision, under the facts developed by defendant's own evidence, would be, not the plaintiff's driver, but said inspector, as the act of said inspector in grabbing the steering wheel

from plaintiff's driver is clearly a tortious act of his not falling within his powers and duties as such inspector.

There is another reason for not granting the defendant the damages on his counterclaim. According to the evidence, defendant's bus was hit at the back part of the trailer attached to it, this trailer being an iron vehicle used by the United States Army during the last war (t. s. n., p. 5). Defendant testified that he spent the sum of ₱380 on his truck and ₱90 on the trailer. While this statement is not contradicted, neither is it corroborated, nor the supposed expenses itemized in such a manner as to convince this court that the supposed damage was actually caused. The fact remains, however, that notwithstanding the supposed extensive damage to the truck and the trailer, both continued on their way; whereas, plaintiff's bus, which was supposed to have been damaged only to the amount of ₱100, had to discontinue its trip and go back for repairs. We can take judicial notice of the fact that the back of a trailer or of a bus do not contain such delicate and costly parts, like the front part, as to be damaged in a very considerable amount. Under the circumstances, we are of the belief that the amount of the supposed damage caused to defendant's bus and trailer has been exaggerated to such an extent that we can not state with certainty what the amount of actual damage is. By his own exaggeration, defendant-appellee has placed it beyond the power of this court to grant his relief for damages actually suffered.

For all the foregoing considerations, the judgment appealed from is hereby modified, in the sense that both plaintiff's complaint and defendant's counterclaim should be dismissed, without costs of both instances. So ordered.

Reyes and *Paredes, JJ.*, concur.

Judgment modified.

[No. 1773-R. September 29, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* LUIS GODES, defendant and appellant

1. EVIDENCE; TESTIMONY OF WITNESS; CONTRADICTIONS IN MATTERS OF DETAIL DO NOT AFFECT CREDIBILITY OF WITNESSES.—Courts and text writers agree that several persons who witness the happening of a certain event, cannot be expected to give an exactly identical account of what they saw. While their narrative may be substantially the same, they may disagree, and even contradict themselves, as to matters of detail, and this is what makes their testimony more believable. It should be taken into consideration that seldom two persons have the same mental capacity, perception, education, memory and faculty of observation. These inequalities account for those discrepancies and even contradictions that are noted in the testimonies of witness. The Supreme Court, being confronted

with a similar problem in the case of People *vs.* Limbo (49 Phil., 94) made a ruling which is in all fours with the question at bar.

2. ID.; "ANTE MORTEM" DECLARATION, AS PART OF "RES GESTAE;" ADMISSIBILITY.—The deceased, fully conscious of his impending death, in the presence of several persons, made a dying declaration naming the accused as the one who stabbed him. Considering that such declaration was made by the deceased when he was about to appear before, and render an account of his acts to his Supreme Judge, the lower court acted properly in giving it the weight that it deserves (People *vs.* Al-Mendralejo, 48 Phil., 268). At any rate that *ante mortem* declaration, having been made immediately after the incident, may be considered, at least, as part of the *res gestae*, and, therefore, admissible in evidence.

APPEAL from a judgment of the Court of First Instance of Samar. Benitez, J.

The facts are stated in the opinion of the court.

Teofilo Mendoza for appellant.

Assistant Solicitor-General Rosal and *Solicitor Feria* for appellee.

TORRES, *Pres. J.:*

At about four o'clock in the afternoon of February 18, 1947, the deceased, Serapio Robredillo, and Juan Penida, Lucero Montera, Francisco Rapis, Zosimo Rapis and Jose Robredillo sat on the floor of the house of Ricardo Pomarejos located in the municipality of Dolores, Samar, drinking tuba; in fact about four liters of the beverage were bought for that purpose. Around 6:30 in the evening, this appellant and Francisco Rapis, *alias* Erot, entered the house, through the kitchen, and Rapis approaching Juan Pomida who was sitting on the floor grabbed him by the hair from behind, while Luis Godes with a bolo struck Pomida on the left of his forehead, causing the latter to fall down.

In the meantime, Serapio Robredillo who made a dash for the window, presumably to jump therefrom, was held back from behind by Francisco Rapis, while appellant rushed toward Serapio and stabbed him with the bolo which he used against Pomida, inflicting upon Serapio two wounds, one on the left tempore-parietal region, and another on the left coastal region (Exhibit A). Those wounds were inflicted with a sharp cutting knife, and according to the evidence the second wound, on account of the hemorrhage it produced, caused the death of Serapio.

Luis Godes was prosecuted accordingly, and after proper proceedings the Court of First Instance of Samar found him guilty of homicide, and taking into consideration that this accused was convicted of a similar offense in the year 1937, and there being no mitigating circumstance to offset said aggravating circumstance, it sentenced

him to an indeterminate penalty ranging from twelve (12) years and one (1) day to twenty (20) years of *reclusión temporal*, with the corresponding accessories, to indemnify the heirs of the deceased in the amount of ₱2,000, and to pay the costs.

The only question raised by appellant in this instance involves the credibility of the witnesses, because according to counsel those who testified for the defense deserved more credit than those of the prosecution.

Much reliance is given by appellant upon apparent contradictions incurred by the witnesses who took the stand for the prosecution, but considering that, from the time of the arrival of this appellant and his companion Serapio Robredillo, the sequence of events happened in rapid succession, it is no wonder that each of those who were sitting on the floor of the house of Ricardo Pomarejos, would have given an account of what he saw and did, appearing somewhat different from that given by the others who were also present when this incident occurred.

Courts and text writers agree that several persons who witness the happening of a certain event, cannot be expected to give an exactly identical account of what they saw. While their narrative may be substantially the same, they may disagree, and even contradict themselves, as to matters of detail, and this is what makes their testimony more believable. It should be taken into consideration that seldom two persons have the same mental capacity, perception, education, memory and faculty of observation. These inequalities account for those discrepancies and even contradictions that are noted in the testimonies of witnesses. The Supreme Court, being confronted with a similar problem in the case of People *vs.* Limbo (49 Phil., 94) made a ruling which is in all fours with the question before us. It said—

"Everyday life and the result of investigations made in the field of experimental psychology shows that the contradictions of witnesses generally occur in the details of a certain incident, after a long series of questioning, and far from being an evidence of falsehood constitute a demonstration of good faith. Inasmuch as not all those who witness an incident are impressed in like manner, it is but natural that in relating their impressions they should not agree in the minor details; hence, the contradiction in their testimony.

"As to a witness contradicting himself on the circumstances of an act or different acts, this may be due to a long series of questions on cross-examination during which the mind becomes tired to such a degree that the witness does not understand what he is testifying about, especially if the questions, in their majority are leading and tend to make him ratify a former contrary declaration. In this case the mind, incapable of reasoning, only reflects, like an echo, the idea suggested. Professor Ed. Claparede, Director of the Psychological Laboratory of the University of Geneva in his work 'What is the Value of Evidence' says: 'In the giving of evidence suggestion plays a most important part. The simple fact

of questioning a witness, of pressing him to answer, enormously increases the risk of errors in his evidence. The form of the question also influences the value of the reply that is made to it. Let us suppose, for instance, that some persons are questioned about the color of a certain dog. The replies are likely to be much more correct if we ask the witness, 'What is (was) the color of the dog?' than if we were to say to them, 'Was the dog white, or was it brown?' The question will be positively suggestive if we ask the witness, 'Was the dog white?'

* * * A leading question propounded to a witness may, by creating an inference in his mind, cause him to testify in accordance with the suggestion conveyed by the question; his answer may be 'rather an echo to the question' than a genuine recollection of events * * *'" (Moore on Facts, Vol. II, pp. 913, 914).

The appellant would not give any credit to the testimony of Juan Pomida on the wrong assumption that if he really jumped from the house he could not have seen the stabbing of Serapio Robredillo. But the record shows nowhere that said witness ran away or fled from the house because of fear, as his testimony is to the effect that he saw appellant stab the deceased, which statement tallies with the statement he made in Exhibit A.

If the testimony of Juan Pomida and otber witnesses who testified for the prosecution were not sufficient to establish the guilt of this accused, it should not be forgotten that the deceased, fully conscious of his impending death, in the presence of several persons, made a dying declaration naming the appellant as the one who stabbed him. Considering that such declaration was made by the deceased when he was about to appear before, and render an account of his acts to his Supreme Judge, the lower court acted properly in giving it the weight that it deserves (People *vs.* Almendralejo, 48 Phil., 268). At any rate that *ante mortem* declaration, having been made immediately after the incident, may be considered, at least, as part of the *res gestae,* and, therefore, admissible in evidence.

Appellant has admitted that in 1937, he was convicted by final judgment of the crime of homicide.

The guilt of Luis Godes having been established beyond reasonable doubt, and there being present the aggravating circumstance of recidivism, without any mitigating circumstance to offset the same, the indeterminate penalty that should be, and is hereby imposed upon him shall not be less than ten (10 years and one (1) day of *prisión mayor,* as minimum nor more than twenty (20) years of *reclusión temporal,* as maximum. Thus modified, the judgment of the lower court is otherwise affirmed. Appellant shall pay the costs. So ordered.

Endencia and *Felix, JJ.,* concur.

Judgment modified.

[No. 823–R. September 30, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* FEDERICO NAVAL and ESTEBAN BELTRAN, defendants. FEDERICO NAVAL, appellant.

1. CRIMINAL LAW; THEFT; "CORPUS DELICTI", PROOF OF; PRODUCTION IN COURT OF SUBJECT OF CRIME, WHEN NOT NECESSARY.—In the case at bar, there was no necessity of bringing the box containing the merchandise, subject matter of the crime, whose existence is shown by the withdrawal slip, Exhibit A, because it was so big that it could not be taken to the court room which was on the third floor of the building. Besides, the identity of said box and its contents were sufficiently established by the testimony of the offended party, who, without contradiction, testified that the box in question contained 120 bed sheets valued at ₱6 a piece and that the quantity of the contents of the box was printed on it.
2. ID.; ID.; CONTROL AND OCCUPATION OF THE THING STOLEN MAKES CRIME CONSUMMATED.—In the juridical sense, the consummation of the crime of theft (or robbery) takes place upon the voluntary and malicious taking of the property belonging to another which is realized by the material occupation of the thing whereby the theft places it under his control and in such a situation as he could dispose of it at once. (People *vs.* Sobrevilla, 53 Phil., 226.)

APPEAL from a judgment of the Court of First Instance of Manila. Jugo, J.

The facts are stated in the opinion of the court.

Alejandro de Santos for appellant.

Assistant Solicitor-General Torres and *Solicitor Abad Santos* for appellee.

GUTIERREZ DAVID, *J.:*

In the Court of First Instance of Manila Federico Naval and Esteban Beltran were charged with the crime of theft. The former was found guilty and sentenced to suffer an indeterminate penalty of from 6 months of *arresto mayor* to 2 years, 11 months and 10 days of *prisión correccional,* and to pay ½ of the costs, from which judgment he appealed. The latter was acquitted for lack of sufficient evidence.

The prosecution has established the following facts:

On april 28, 1946, O. E. Childers, an employee of John Sy Cip, made a complaint with the Manila Police Department of the pilferage of Sy Cip's stocks placed on the barges docked at the North Harbor, Manila. In the morning of the next day, Patrolman Hermenegildo Pablo of the Manila Police, with two other plainclothesmen, went to the North Harbor to investigate the matter. Pablo was informed by Childers that the merchandise of Sy Cip were then being loaded in trucks at the Harbor and was told to board one of said trucks. The merchandise, consisting of medical equipments, were to be

brought to the bodega of La Tondeña at Velasquez Street, City of Manila. Pretending to be a laborer, Pablo rode on Truck No. 1266–46 loaded with said equipments. His therein were the appellant Federico Naval, who was the watchman hired by Sy Cip; Esteban Beltran, the driver of the truck; and two other laborers. Naval was with Pablo on top of the truck load. Upon seeing Pablo, Naval asked him if he was a laborer, to which he answered in the affirmative and added that he just began working on that day. During their conversation, Pablo inquired as to the destination of the truck and Naval informed him that it was bound to the warehouse of La Tondeña at Velasquez Street. After the truck left the checkpoint at the North Harbor and was along Azcarraga Street, a man, who boarded the truck and commonly known as "sniper," approached Naval. Pablo heard them say in Tagalog: "Mayron tayong ibabagsak." Meanwhile, the truck rolled on, but instead of taking the usual route along Azcarraga Street, it turned right to Asuncion Street, then turned right again to Camba Street, proceeded along the latter street, and when it was midway between Marcelino de Santos and Azcarraga Streets, it stopped. At this moment, Naval and the "sniper" dropped to the ground one of the boxes loaded in the truck. Forthwith, Pablo grabbed both of them but the "sniper" was able to get away. The appellant was placed under arrest by Pablo. The box in question contained 120 bed sheets valued at ₱720 which were later on recovered.

The version of the defense was that appellant ordered the driver to take the route along Asuncion and Camba Streets because the traffic was heavy on the route usually followed by the truck. When the truck was passing along Camba Street and was nearing Azcarraga Street, the box in question fell accidentally from the truck without appellant noticing it. Thereupon, a policeman, who was nearby, shouted at them calling attention to the fallen box. When the truck stopped, Pablo immediately arrested the appellant. The latter protested. He knew Patrolman Pablo since pre-war days. On the day of the incident, Pablo asked appellant to spy on the workers at the North Harbor, but the latter refused.

Under the first assignment of error, it is contended that the receipt (Exhibit A) prepared by the Supply Officer of the Police Department was improperly admitted by the lower court and that the prosecution has not presented any competent evidence to identify the subject matter of the crime and to prove its value. It is unquestioned that a box of merchandise belonging to Sy Cip was loaded in the truck together with other cargo and was dropped somewhere before the truck reached its destina-

tion. The only question is whether it was purposely dropped by the appellant and his companion, as the prosecution claimed, or it accidentally fell from the truck as averted by the defense. Said box, according to Patrolman Pablo, was delivered to the Supply Branch of the Manila Police Department for safekeeping and for which the aforesaid patrolman was given withdrawal slip, Exhibit A, wherein the latter was given authority to withdraw the box. The box in question was not brought to the court because it was so big that it could not be taken to the courtroom which was on the third floor of the biulding. So, Sy Cip, the offended party, was authorized by the court to go to the police station and examine said box which he did. And testified in court, Sy Cip said, without any contradiction, that the box in the question contained 120 bed sheets valued at ₱6 a piece and that the quantity of the contents of the box was printed on it. The identify of the box and its contents and the value of the bed sheets were sufficiently established. Hence, there is nothing to the points raised.

The next question raised by the appellant is that the evidence does not establish the crime of consummated theft. It is urged that the first essential element of the crime of theft is that the property be actually taken away by the theft or that the theft must have obtained at some particular moment the complete, independent and absolute possession and control of the thing desired adverse to the right of the owner or lawful possessor thereof. We find no merit in this contention. The appellant dropped the box containing the bed sheets involved in this case from the truck of the offended party and from that moment he placed the property, which did not belong to him, in a position where he could have disposed of it for his own personal gain. In the juridical sense, the consummation of the crime of theft (or robbery) takes place upon the voluntary and malicious taking of the property belonging to another which is realized by the material occupation of the thing whereby the theft places it under his control and in such a situation as he could dispose of it at once. Thus, in the case of People *vs.* Sobrevilla, 53 Phil., 226, the Supreme Court held:

"*Criminal Law; Qualified Theft.*—The defendant took the offended party's pocket-book, although the latter, after struggling with him, recovered it. Such taking determines the crime of qualified theft, and the fact that the pocket-book was recovered does not affect the defendant's liability."

There being no reversible error in the decision appealed from, the same is hereby affirmed, with costs against the appellant.

Reyes and *Borromer, JJ.*, concur.

Judgment affirmed.

[No. 1512–R. September 30, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* CIRILO SEDON, BENJAMIN MONTALVO and DIONISIO MONSERATE, defendants and appellants.

CRIMINAL LAW AND PROCEDURE; EXTRAJUDICIAL CONFESSIONS; IDENTICAL EXTRAJUDICIAL CONFESSIONS OF SEVERAL ACCUSED, THEIR EFFECTS.—It was held that when extrajudicial confessions had been made by several persons charged with an offense and there could have been no collusion with reference to such confessions or opportunity of conference with each other, before making the declaration, the fact that the statements therein are in all material respects identical, is confirmatory of the confession of the co-defendants. (People *vs.* Padilla et al., 48 Phil., 718, 725; I Francisco's Criminal Evidence, pp. 325, 330.)

APPEAL from a judgment of the Court of First Instance of Iloilo. Makalintal, J.

The facts are stated in the opinion of the court.

Alejandro M. Panis for appellants.

Assistant Solicitor-General Kapunan Jr. and *Solicitor De los Angeles* for appellee.

PAREDES, *J.:*

Leopoldo Nebiar and his family were living in the barrio of Cubay, municipality of Miagao, Province of Iloilo. About 1 o'clock in the morning of June 14, 1946, they were awakened by the noise of furnitures being moved inside their house. Purificacion Nebiar sat up to find out the cause and saw Cirilo Sedon armed with a gun standing by the door, and with him Eulalio Siasat who was armed with a pistol. Until now Siasat has not been apprehended. At the point of his gun, Sedon herded the persons in the house downstairs, with the exception of Leopoldo who was ordered by Siasat to remain with him. Purificacion heard Siasat demanding money from her father and sensed the opening of their trunk and the gathering of some of their belongings. Thereafter, Siasat called three of his companions and ordered them to pack and take away the things gathered. Before they went away, Siasat warned Leopoldo not to report the incident, upon pain of being killed. The members of the family found their belongings scattered on the floor, and the following articles missing: coins in the amount of ₱30, Emergency notes, valued at ₱500; Sixty-eight pieces of patadiong, valued at ₱4 each; Sixteen pesos in genuine money; four pairs of earrings, valued at ₱20 each, and one ring, all representing the total sum of ₱1,033.50. Two pairs of earrings, Exhibits A and B had been recovered by the chief of police from the persons to whom Siasat had sold them. The same morning, Leopoldo reported the robbery to the police authorities of the town, but did not mention the identity of the intruders on account of Siasat's threats.

The chief of police questioned Purificacion who, in view of her father's advice, merely gave the details of the robbery without mentioning the names of the robbers she recognized, stating that she could not identify them, because of their masks. The case was referred to the secret service and the military police. For unknown reasons, the case was tabled in the Office of the Military Police, and would have been completely forgotten had not Lt. Godofredo Merado, Commander of Guimbal detachment, discovered in October, 1946, that it was one of those cases pending action. Lieutenant Merado investigated the case, and went to the Nebiars. Purificacion, this time, broke her silence regarding the identity of the offenders, as her father had died on August 6, 1946. Purificacion told her investigators that Sedon was one of them. So, Sedon was arrested. Benjamin Montalvo and Dionisio Monserate who, according to the investigation conducted by the police authorities, belonged to the group of Sedon, were also arrested, as suspects. The three admitted their participation in the robbery. After reducing their confessions to writing which are now Exhibits C, D and E, the accused were taken to the justice of the peace of Miagao and signed their respective confessions before him. In this connection, Purificacion stated that "the boys (referring to the appellants) told me that they were the ones who robbed us."

Sedon testified that from June 12 to June 15, 1946, he and Bernardo Jamora were in barrio Pañata, 10 kilometers from San Joaquin, gathering corn. Montalvo declared that on the night of June 13, 1946, he, his brother Aniceto, and a friend Tomas Nolado, were serenading in barrio Guimbuan, Miagao, and because it rained, they passed the night in the house of Salvacion Montalvo. Monserate alleged that on the night of June 13, 1946, he also joined a serenade in the barrio of Banayao, 3 kilometers from Miagao, accompanied by Teofilo Villanueva and Andres Naret; that because it rained, they were forced to spend the night in the house of a certain Leon Lamberto, and stayed there until the next morning. The three accused also declared that their confessions were obtained by force and intimidation.

Upon this evidence, the Court of First Instance of Iloilo convicted the three accused of robbery with violence and intimidation against persons and sentenced each to an indeterminate penalty ranging from two (2) years, four (4) months and one (1) day of *prisión correccional* to six (6) years and one (1) day of *prisión mayor*, to indemnify jointly and severally the heirs of the offended party Leopoldo Nebiar in the sum of ₱993.50, with subsidiary imprisonment in case of insolvency, and to pay the propor-

tionate costs, ordering the return of Exhibits A and B to the said heirs.

Counsel for the appellants contends that the court erred in giving credit and weight to the testimony of Purificacion and to the affidavits Exhibits C, D and E of the appellants. He raised the question as to the identity of the accused. The identification made by Purificacion as to Sedon, is positive and convincing, not only because she had known this appellant long before the commission of the offense, having been together in the fourth grade in school, but also because no motive had been shown why she would falsely impute upon said appellant so serious an offense as robbery with force, not to say anything of the presence of the moon that night and the existence of a light below the house. Testifying, she said:

"P. Now, you stated that Cirilo Sedon was your classmate in the 4th grade: taking into consideration your acquaintance with Cirilo Sedon, were you able to recognize him?—R. I was able to recognize his voice; and when he was near, I saw his face."

Counsel lays much stress on the conduct of Purificacion in having told to the chief of police on June 14, 1946, one day after the said robbery, that she could not recognize the robbers because of their masks, and in having contradicted this statement in her testimony given on February 19, 1947. She explained, however, that her failure to disclose the identity of Sedon was due to Siasat's threats and to the advice of her father not to do so. We consider the explanation satisfactory. Purificacion, as a good daughter, had to abide by the wishes of her father to avoid reprisals upon him and his family, and, as a prudent person, wanted to bide her time until the affair shall have cooled off. This circumstance and the suspicious inaction of the police in that locality, also explain the delay in the filing of the information.

It is also argued that the accused Montalvo and Monserate had not been identified by any witness, as among those who broke that night into the house in question. In convicting them, the trial court relied mainly upon their confessions Exhibits D and E, the translations of which into English are Exhibits D–1 and E–1, respectively. A careful perusal of these confessions shows that their contents tally with the confession Exhibit C of Sedon who was, as has been stated, identified in an unmistakable manner as having been among the five who had committed the robbery, and engenders in the mind a conviction as to the truth of what had been stated therein. The detailed narration in each affidavit, as to how the robbery was proposed and planned, the arms that were used, how and from whom they were obtained, the manner in which the crime was carried out, and the distribution of the loot, proves, in the absence of collusion among the affiants, the

veracity of their story. It was held that when extra-judicial confessions had been made by several persons charged with an offense and there could have been no collusion with reference to such confessions or opportunity of conference with each other, before making the declaration, the fact that the statements therein are in all material respects identical, is confirmatory of the confession of the co-defendants. (People *vs.* Padilla, et al., 48 Phil., 718, 725; I Francisco's Crim. Evid., pp. 325, 330.) Moreover Purificacion corroborated these confessions regarding the number of malefactors she had seen that night, the number of firearms they carried, the description of the articles they had looted, the jewelries recovered and the identity of the appellant Sedon.

The appellants, nevertheless, alleged that they signed Exhibits C, D and E only after having been subjected to serious maltreatment by the military police. While the evidence on this point is at best conflicting, there are circumstances which would tend to show that these confessions were given, as contended by the prosecution, voluntarily. The peace officers denied emphatically the use of force and intimidation in securing them. The justice of the peace, Esteban S. Seva, affirmed that while it is true that said affidavits were already prepared when brought before him, nevertheless he slowly read the contents thereof to each of the accused and asked them whether the statements appearing therein were true and freely given; and an affirmative answer having been given by each, he allowed them to sign. We have no reason to doubt the veracity of the justice of the peace. Moreover, this alleged third degree was mentioned by appellants Sedon and Montalvo for the first time at the hearing of this case. They stated that the same was not even communicated by them to their attorney, from which we may draw two conclusions: Or testimony was not true because no one should believe that a client would not communicate his vital defense to his attorney, or that such illtreatment had never taken place, because the first reaction of a person subjected to torture would be to denounce such act to another, especially to the duly constituted judicial authorities. The fact that appellants were examined by a doctor and no injuries were found on their bodies, belies the assertion of the appellants that brass knuckles were employed by the peace officers who, according to the appellants themselves, were unknown to them before their arrest.

The proof of *alibi* is not convincing. Appellants have not presented any unbiased or disinterested persons to substantiate this defense. If it were true that they had gone out serenading, they should have presented as witnesses, at least, the owners or inmates of the houses where

they had been. *Alibi* is, by its very nature, a week defense, especially when, as in this case, it is supported by the testimony of close relatives and intimate friends of the appellants and in the face of the confessions made by them.

The crime perpetrated by the appellants is robbery with violence or intimidation against persons, aggravated by nocturnity, said appellants having purposely sought nighttime to facilitate the commission thereof, with no mitigating circumstance to offset it. The Court, therefore, sentence the appellants each to suffer an indeterminate penalty ranging from six (6) months of *arresto mayor* to six (6) years, ten (10) months of *arresto mayor* to six (6) years, ten (10) months and one (1) day of *prisión mayor*, to indemnify the heirs of the offended party, jointly and severally, in the sum of ₱993.50, without subsidiary imprisonment in case of insolvency, and to pay the proportionate costs. Exhibits A and B are hereby ordered returned to the same heirs. So ordered.

Labrador and *Barrios, JJ*, concur.

Judgment modified.

[No. 1890–R. September 30, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* ILUMINADO UMALI, defendant and appellant

1. CRIMINAL LAW; ILLEGAL POSSESSION OF FIREARM; CONSTRUCTIVE POSSESSION LIKE ACTUAL POSSESSION ALSO PUNISHED.—The possession of firearms punishable by law is possession in general, including not only actual physical possession but also constructive possession, or the subjection of the thing to the control of the accused. (People *vs.* Elena Francisco, CA–G. R. No. 188-R, January 22, 1947; People *vs.* Conoza, CA–G. R. No. 1074-R.)
2. COURTS; PENALTY; IMPOSITION OF SEVERE PENALTY BY THE COURT.— While the penalty meted to the accused may appear unduly severe for a young man of 17 years, the court has no other alternative but to impose it, as it is not for the court to pass upon the wisdom of legislative policy.

APPEAL from a judgment of the Court of First Instance of Laguna. Yatco, J.

The facts are stated in the opinion of the court.

Tomas Dizon for appellant.

Assistant Solicitor-General Torres and *Solicitor Abad Santos* for appellee.

REYES, J. B. L., *J.:*

The appellant prays this Court to reverse the judgment of the Court of First Instance of Laguna convicting him of illegal possession of firearms and ammunition, penalized under section 2692 of the Revised Administrative

Code, as amended by Republic Act No. 4, and sentencing him to 5 years of imprisonment and costs, with confiscation of the weapons in favor of the Government.

The facts are as follows: During a raid at *barrio* Durungawan, Calawang, Laguna, in the morning of March 24, 1947, by the Military Police Command, a house to house search was instituted. When the house of appellant was reached, he was asked if he had any firearms and answered in the negative. Sergeant Benito Silerio then warned appellant that his premises would be searched and if anything unlawful was discovered, the appellant would be held responsible. While appellant made no answer, his attitude caused the sergeant to become suspicious and he examined a spot in the house yard indicated by appellant's gaze. There he found one carbine with three magazines loaded with ammunition, the whole wrapped in an empty sack, hidden in the grass and covered by banana leaves. Upon such discovery, Lieutenant Villena asked the appellant if he had any other gun and appellant confessed that he had a second one hidden in another place. He voluntarily indicated it to the soldiers, who came upon a Japanese rifle with six rounds of ammunition. The appellant was arrested and taken to the Military Police Headquarters where he subscribed and swore to a statement (Exibit A, rec. p. 3) before the justice of the peace of Calawang.

It is contended for the appellant that the arms and ammunition were deposited with him by certain *Huks* by the name of Roque Vinzon and Leopoldo Seva two months before they were found. And it is urged further that he had no *animus possidendi* because he kept the weapons only through fear and voluntarily disclosed their existence to the law enforcement agents.

The lone and uncorroborated testimony of appellant is insufficient to establish legal grounds for his acquittal, especially because in his statement he not only failed to mention that the weapons belonged to other persons, but admitted keeping them to prevent his carabao from being stolen. Even assuming that it were true that the said weapons and ammunition had been deposited with him by the persons he named at the trial, the fact remains that, knowing the existence of said weapons in the yard of his house, the appellant failed to notify the authorities about the same, when there was ample time to do so. He was therefore in possession of said weapons and amenable to the penalties imposed by law. The possession of firearms punishable by law is possession in general, including not only actual physical possession but also constructive possession, or the subjection of the thing to the control of the accused. (People *vs.* Elena Francisco,

CA–G. R. No. 168–R, January 22, 1947; People *vs.* Conoza, CA–G. R. No. 1074–R).

It is to be noted that what is prohibited is not ownership but mere possession, and of such possession there can be no doubt on the facts disclosed by the records. The allegation that the appellant kept silent for two months due to fear is not reasonable, for had he chosen to seek the authorities, they could have given him ample protection. Moreover, it does not appear that any threat was made to enjoin him from disclosing the existence of the guns.

The ascertion that appellant voluntarily revealed the existence of the rifles is not supported by the evidence, for the appellant at first denied the presence of the weapons and if the carbine was discovered it was due to the alertness of Sergeant Silerio. The fact that after this discovery, appellant voluntarily pointed out the Japanese rifle only evidences that he had realized the futility of his attempt to conceal the weapons since the soldiers would arrest him anyway; he therefore merely tried to mitigate his responsibility by making a clean breast of the entire affair. The fact remains that the carbine was discovered without his cooperation.

As to the statement Exhibit A, we can not give credence to the allegation that he was misled into signing it with the promise that nothing would happen to him, as against the testimony of the soldiers and the justice of the peace who denied such promise and who, as far as the records disclose, are unbiased. It may be noted in this connection that the military police officers and soldiers did not exhibit any animosity towards appellant but rather sought to favor him by noting down his age as 15 years, with the obvious purpose of avoiding his suffering any imprisonment under Republic Act No. 47, which lowered the age limit for suspended sentences (fixed in article 80 of the Revised Penal Code) from 18 to 16 years. Actually, the appellant confessed in open court that he was 17 years of age; so that his sentence may not be now suspended in view of said Republic Act No. 47, which came into effect in October 3, 1946, six months before the appellant was arrested. While the penalty may appear unduly severe for a young man of 17 years, we have no other alternative but to impose it, as it is not for the court to pass upon the wisdom of legislative policy.

We find no reversible error committed by the court below. The decision is affirmed, with costs against appellant.

Gutierrez David and *Borromeo, JJ.*, concur.

Judgment affirmed.

[No. 1925–R. September 30, 1948]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* YAP SONG KHE, defendant and appellant

1. ILLEGAL POSSESSION OF PROHIBITED DRUG; EVIDENCE; TESTIMONY OF POLICE OFFICERS; ITS PROBATIVE VALUE; ILLEGAL MOTIVE, LACK OF.—The possibility of appellant being the victim of an illegal maneuver on the part of the detectives can be safely discounted, considering that it is nowhere suggested that any improper demand was made upon him or that any illegal motive impelled the police agents. The defendant did not testify that the latter bore any grudge against him or made any demands for the payment of money or valuables.
2. ATTORNEY AND CLIENT; DUTY OF COUNSEL TOWARDS THE COURT; BREACH OF ETHICS; COUNSEL REPRIMANDED.—The court can not overlook the improper conduct of counsel for the appellant in his attempt to mislead the court. It is unnecessary to remind counsel that over and above his duty to his client, the lawyer owes to the court absolute candor and fairness and that an effort to mislead the courts of justice is a serious breach of ethics and official duty. Being the first case called to the attention of the court on the part of this attorney, this Court is content for the nonce to reprimand, as he is hereby reprimanded, and warned that a repetition of such tactics will bring swift and more drastic action.

APPEAL from a judgment of the Court of First Instance of Manila. Dinglasan, J.

The facts are stated in the opinion of the court.

I. C. Monsod for appellant.

Assistant Solicitor-General Torres and *Solicitor Consing* for appellee.

REYES, J. B. L., *J.:*

Acting upon information that opium and morphine were being dispensed at the Farmacia Aurora in the City of Manila, Lieutenant Vibar of the General Investigation Division of the Manila Police Department, sent a squad of detectives to observe the same in the morning of December 10, 1946. Upon a raid by the detectives, five Chinamen were apprehended inside the pharmacy with morphine in their possession. Yap Song Khe, accused appellant in the present case, was also seen leaving the pharmacy but he was overtaken by the detectives on the corner of Rivera and Azcarraga streets. Upon being searched, the detectives found on his person two tubes containing tablets of morphine sulphate. All the persons arrested were taken to the police station and investigated. The accused appellant signed there a statement (Exhibit A, rec., p. 5) admitting his having purchased from the owner of the pharmacy two tubes of morphine sulphate tablets for ₱30 and his subsequent arrest with the same in his possession.

Accused appellant, Yap Song Khe, claimed at the trial that he had gone to the pharmacy merely to inquire for the addressee of a certain letter and was seized by the

detectives. To corroborate his assertions, he introduced as witness one of the Chinese taken into custody on that occasion, Ting Suy Kun, who claimed that the tubes of morphine sulphate tablets were in his possession at the time, and not in that of accused appellant. The lower court refused to believe the defense, found Yap Song Khe guilty of a violation of article 190 of the Revised Penal Code and sentenced him to 5 months of *arresto mayor* and a fine of ₱600, with subsidiary imprisonment in case of insolvency, and to pay 1/6 of the costs. Hence this appeal.

Three errors are assigned in this instance.

"(1) That the trial court erred in finding that the two tubes of morphine sulphate were in the possession of accused-appellant.

"(2) That it erred in declaring that the statement Exhibit A. was voluntary, and

"(3) That it erred in not acquitting the appellant."

With regard to the possession of the prohibited drug, evidence is clear beyond reasonable doubt that the detectives found the same in the shirt pocket of the appellant herein. The possibility of appellant being the victim of an illegal maneuver on the part of the detectives can be safely discounted, considering that it is nowhere suggested that any improper demand was made upon him or that any illegal motive impelled the police agents. The defendant did not testify that the latter bore any grudge against him or made any demands for the payment of money or valuables.

The testimony of Ting Suy Kun deserves no credence. It is belied by his own statement at the police station which admits possession of morphine *powder* exclusively, and makes no mention of any tablets at all. It is inconceivable that, knowing himself to be the true possessor of the morphine tablets charged against the accused appellant, this witness should have remained silent and kept such vital information to himself, without telling either the police or the City Fiscal that appellant was innocent.

Regarding the admissibility of appellant's confession Exhibit A, the detectives testified that the same was voluntarily given by the appellant and that his statements in the Amoy dialect were translated by Chan Lugay, who was an official interpreter of the Manila Police Department. This testimony, unbiased as far as the records show must necessarily override that of the defendant which is not corroborated or otherwise supported.

The court can not overlook the improper conduct of counsel for the appellant, I. C. Monsod, in his attempt to mislead the court by asserting no less than three times in the course of his brief (pp. 8, 10, 11) that the witness Ting Suy Kun was a witness for the prosecution. The record is very clear that this party was presented for the defense. This fact is too plain on the record to be missed

and the statements of counsel can not be attributed to negligence, however crass, for he precisely tried to make out a contradiction between the testimony of Ting Suy Kun and that of Detective Estal, a divergence which would be serious if both testified as prosecution witnesses as claimed by him, but of no particular significance when Ting Suy Kun testified for the defense while Estal was a witness for the prosecution. It is unnecessary to remind counsel that over and above his duty to his client, the lawyer owes to the court absolute candor and fairness and that an effort to mislead the courts of justice is a serious breach of ethics and official duty. Being the first case called to our attention on the part of this attorney, we are content for the nonce to reprimand him, as he is hereby reprimanded, and warned that a repetition of such tactics will bring swift and more drastic action.

There being no reversible error in the judgment appealed from, the same is affirmed with costs against appellant.

Gutierez David and *Borromeo, JJ.*, concur.

Judgment affirmed.

[No. 2138–R. September 30, 1948]

PEDRO CORDERO, plaintiff and appellee, *vs.* GRACIANO V. CARIÑO, defendant and appellant

1. LEASE; ITS DURATION IN THE ABSENCE OF STIPULATION; NOTICE TO VACATE, NOT NECESSARY.—A contract for the use of a property for an indefinite period of time, in consideration of a rental fixed on a monthly basis, has been already held to be a lease from month to month, which may be terminated, without especial notice, at the conclusion of any month (Rivera *vs.* Trinidad, 48 Phil., 396).

2. ID.; IMPROVEMENTS; RIGHT OF LESSEE TO REIMBURSEMENT FOR IMPROVEMENTS MADE; ARTICLE 487 IN RELATION TO ARTICLE 1573 OF THE CIVIL CODE, HELD TO BE THE APPLICABLE PROVISION.—In the case at bar, the lessee claims, under article 453 of the Civil Code, an indemnity aggregating ₱20,000, said to have been spent in Japanese military notes, in addition to the sum of ₱500 in Philippine currency, for allegedly filling and fencing lessor's lot, and constructing therein a garage, and for repairs claimed to have been made in the roof of the house. *Held:* Said legal provision is inapplicable for it refers to the rights of a possessor *as owner* (*see* Art. 430, Civil Code), not to those of a lessee, which are governed by article 487, in relation to article 1573 of the Civil Code, pursuant to which a lessee may not demand indemnity for useful, voluntary or recreative improvements, although he may remove the same "should it be possible to do so without injury to the property." It is, likewise, apparent that the construction of a garage, as well as the filling and fencing of a lot, are not necessary expenses (Alburo *vs.* Villanueva, 7 Phil., 277; Valencia *vs.* Ayala de Roxas, 13 Phil., 45; Rivera *vs.* Roman Catholic Archbishop, 40 Phil., 717; Robles *vs.* Lizarraga, 42 Phil., 584; Flores *vs.* Lim, 50 Phil., 738; Valenzuela *vs.* Lopez, 51 Phil., 279; Oasan *vs.* Zabala et al., CA–G. R. No. 164, Feb. 10, 1947.)

APPEAL from a judgment of the Court of First Instance of Manila. Rodas, J.

The facts are stated in the opinion of the court.

Jesus Paredes for appellant.
Marcelo P. Karaan for appellee.

CONCEPCION, *J.:*

This unlawful detainer case was originally instituted in the Municipal Court of Manila. Plaintiff having secured therein a favorable judgment, the defendant appealed to the Court of First Instance of Manila, which, after due trial, rendered a decision, the dispositive part of which reads as follows:

"En su consecuencia, el Juzgado dicta sentencia ordenando al demandado a que restituya la posesión de la finca al demandante y le pague los alquileres devengados desde el Abril de 1946 hasta que la desaloje al tipo de ₱80 al mes, y las costas."

The case is now before us on appeal taken by the defendant who contends that

1. "The Court a quo erred in condemning the defendant to vacate the premises in question."
2. "The Court erred in absolving the plaintiff from defendant's counterclaim."

The issues raised by the pleadings and the evidence introduced are correctly stated in the decision appealed from, the pertinent part of which we quote:

"El demandante Pedro Cordero compró la casa No. 545 de la Calle Antipolo, de esta Ciudad, del Hon. Dionisio de Leon, en Junio de 1943, dando a este último cuatro meses de plazo para continuar ocupándola, plazo que quedó prorrogado hasta principios de 1944, en que, teniendo que salir de esta ciudad el referido Juez Don Dionisio de Leon, permitió al demandado Graciano Cariño ocupar la referida casa, mediante el pago de un alquiler mensual de ₱60 al mismo vendedor, quien se encargaría de remitir dicha suma al comprador Pedro Cordero. En el mes de Marzo o Abril de 1944, cuando Pedro Cordero vino a Manila para ver la casa, la encontró ya ocupada por el demandado, y consintió en que éste continuara ocupando la misma mediante el pago de un alquiler mensual de ₱100, dinero japones, alquiler que el referido demandado había estado pagando al demandante por medio de una tal Marta Pañganiban, sobrina del referido demandante, por encargo expreso de éste, y también, por conducto del hijo del mismo demandante, llamado Cenón.

"En los primeros meses de la liberación que tuvo lugar el año 1945, Cenón Cordero se vino a Manila, por orden de su padre, para ver como se había quedado la casa después de los destrozos causados durante las operaciones militares, y afortunadamente, encontró la misma intacta, continuando como inquilino el mismo demandado, a quien Cenón advirtió que la desalojara, puesto que el demandante, a quien se le quemo la casa en Bauan, quería venir a Manila y vivir en ella, pero el demandado suplicó a Cenón que la dejara continuar ocupando dicha casa hasta que consiguiera volver a Vigan, al cual ruego accedió Cenón, a condición de que el demandado pagara ₱80 de alquiler al mes, y en la inteligencia de que tenía que desalojarla, tan pronto fuese requerido para ello.

"El 26 de Octubre de 1945, el demandado escribió a Cenón Cordero, en Bauan, Batangas, pidiendo la ayuda de éste, para conseguir de su

padre Pedro Cordero otra prórroga para desalojar la casa, a fin de que no se interrumpieran los estudios de sus hijos. El 1.° de Noviembre de 1945, el demandado volvió a escribir, pero esta vez, al mismo demandante Pedro Cordero, haciendo los mismos ruegos.

"Cansado el demandante de hacer requerimientos al demandado para que desalojara la casa, sin que lo consiguiera, hubo de incoar la demanda que dió inicio a esta causa, en 11 de Mayo de 1946.

"El demandado se defiende diciendo que Marta Pañganiban y Cenón Cordero le dieron a entender desde el comienzo que podía continuar viviendo en dicha casa, haciendo las mejoras necesarias y pagando los alquileres convenidos, por lo cual él, durante la ocupación japonesa rellenó el solar de la casa, gastando en ello ₱5,000, construyó un garage que le costó ₱10,000, cercó el solar con alambre espinas a un costo de ₱5,000, e hizo reparaciones en el techo de la casa que costaron ₱500, y pide que se le reembolse el precio de estas mejoras que ascienden a ₱25,000 japoneses en forma de reconvención. Explicando como llegó a escribir las cartas Exhíbits A y B, el demandado dice que él fué instado por Cenón Cordero, pues este y su padre, que habían perdido el título de propiedad de la referida finca, querían tener un reconocimiento de sus derechos dominicales del propio demandado, para que escribiera, y él no tuvo inconveniente en escribir dichas cartas haciendo reconocimiento expreso de dichos derechos. El demandado también hizo hincapié en el hecho de que él ha estado pagando los alquileres de dicha finca, tres, cuatro y a veces seis meses por adelantado en la inteligencia de que se le permitiera quedarse.

"El demandante y sus testigos niegan que se hayan hecho por el demandado las mejoras arriba descritas, y aseguran que éste sólo hizo cambios en la casa y sus dependencias que lejos de beneficiar al referido demandante, le han perjudicado, y aseguran también que nunca dieron a entender al demandado que podía hacer mejoras en la finca y quedarse en ella todo el tiempo que quisiese. También negó el demandante que un americano quería ocupar la casa o que él quiere alquilarla a otras personas como ha declarado el demandado Cariño, o insistió que él desea que se desalojara la casa porque la necesita, pues tiene planeado vivir en Manila con su familia, donde estudian sus hijos, habiendo sido quemada la casa que tenía en Bauan, Batangas."

In support of the first assignment of error, it is urged that there is no cause of action against the defendant and appellant because plaintiff does not own the house in question, the same not having been delivered to him as yet; because said house was leased by the defendant and appellant from its original owner thereof, not from plaintiff herein; and because even if there should be a contract of lease between plaintiff and the defendant, the duration thereof was indefinite, for which reason—defendant and appellant argues—his possession cannot be illegal until after the proper court shall have fixed the term of the lease and the same has expired.

There is no merit in this contention. Although there was no physical delivery of the house to the plaintiff when he bought it in the year 1943, the tradition known in legal parlance as *constitutum posesorium* took place, the vendor having continued in possession of the house, with the express consent of the vendee and under a title other than that of owner thereof (3 Sanchez Roman, 240). Moreover, when the vendor leased the premises to the defendant,

the latter knew that the former had already sold the property to the plaintiff herein and acted on his behalf, defendant having been explicitly advised that the rental would be, as it was, forwarded to plaintiff herein, as such vendee. What is more, in March or April, 1944, after the departure of the vendor from Manila, the defendant dealt with, and paid the corresponding rentals to, plaintiff's representatives, namely, his niece Marta Pañganiban, and since liberation, his son, Cenon Cordero. Indeed, defendant alleged in his answer that his contract of lease "data desde el año 1944, mes de Marzo, en que el demandado tomó posesión de la casa con promesa del *demandante* de que él podía permanecer en ella todo el tiempo que quiera," thus impliedly, but clearly, admitting the contract of lease with the plaintiff.

Again, plaintiff denied that he had agreed to allow the defendant to stay in the premises as long as he wanted, contrary to the testimony of the defendant on this point. This is further contradicted by his two letters Exhibits B and A, dated October 26 and November 1, 1945, respectively, in which the defendant begged from Cenon Cordero and his father, plaintiff herein, for an extension of the period within which to occupy the house in question. Instead of making these pleas, the defendant would have, in all probability, reminded the plaintiff that, in demanding that the house in question be vacated, he infringed the terms of their alleged agreement, had the tenor thereof been as testified to by the former. At any rate, a contract for the use of a property for an indefinite period of time, in consideration of a rental fixed on a monthly basis, has been already held to be a lease from month to month, which may be terminated, without especial notice, at the conclusion of any month (Rivera *vs.* Trinidad, 48 Phil., 396).

Invoking article 453 of the Civil Code, appellant claims, under the second assignment of error, an indemnity aggregating ₱20,000, said to have been spent in Japanese military notes, in addition to the sum of ₱500 in Philippine currency, for allegedly filling and fencing plaintiff's lot, and constructing therein a garage, and for repairs claimed to have been made in the roof of the house. Said legal provision is, however, inapplicable, for it refers to the rights of a possessor *as owner* (see Art. 430, Civil Code), not to those of a lessee, which are governed by article 487, in relation to article 1573 of the Civil Code, pursuant to which a lessee may not demand indemnity for useful, voluntary or recreative improvements, although he may remove the same "should it be possible to do so without injury to the property." It is, likewise, apparent that the construction of a garage, as well as the filling and fencing of a lot, are not necessary expenses (Alburo *vs.* Villanueva, 7 Phil., 277; Valencia *vs.* Ayala de Roxas, 13 Phil., 45; Rivera *vs.* Roman

Catholic Archbishop, 40 Phil., 717; Robles *vs.* Lizarraga, 42 Phil., 584; Flores *vs.* Lim, 50 Phil., 738; Valenzuela *vs.* Lopez, 51 Phil., 279). Furthermore, we held in another case,

> As to the repairs, it is settled that "the remedy of the tenant * * *, when the landlord fails to make necessary repairs, is by demand for the annulment of the contract and indemnity by way of damages or without demanding annulment of the contract by demand for damages for negligence on the part of the landlord;" and that a tenant has no authority to make even necessary repairs "at the expense of the landlord, except when it is a matter of the most urgent necessity (reparación urgentésima) 'where the slightest delay would involve grave damages,' when the tenant may make the absolutely necessary means to avoid the loss, at the cost of the owner, doing only that which is required by the force of circumstances and no more, but this on the ground that 'he had acted by virtue of the social duty of mutual aid and assistance.' (Manreza Vol. 10, p. 473.)" (Alburo vs. Villanueva, 7 Phil. Rep., 277, 279–280. There being no evidence, or even allegation, that the repairs in question, if any, were of such urgent nature or had been made under the circumstances indicated, it follows that a recovery cannot be predicated thereon. (Oasan *vs.* Zabala et al. CA–G. R. No. 164, Feb. 10, 1947.)

Lastly, the defendant has not established satisfactorily that he had made the expenses already mentioned, which were denied by the plaintiff. In fact, he did not even demand reimbursement of such alleged expenses prior to the institution of this case, despite plaintiff's several demands that he vacate the premises in question. Hence, the second assignment of error is untenable.

In view of the foregoing, the decision appealed from is hereby affirmed, with costs against the defendant and appellant. It is so ordered.

Dizon and *De Leon, JJ.*, concur.

Judgment affirmed.

[No. 2509–R. September 30, 1948]

GORGONIO TAGARDA, contestant and appellant, *vs.* JOSE P. ROA, contestee and appellee

1. ELECTION LAW; EVIDENCE; BEST EVIDENCE OF VOTES CAST; RULE; WHEN RETURN OF INSPECTORS PREVAILS; CASE AT BAR.—As a general rule, the ballots found in a ballot box by the commissioners of the court would be the best evidence of the votes cast. However, as in the present case, when the ballots and the ballot box have been so tampered with after the elections that they do not represent the votes cast, they lose their probative value and the return of the election inspectors, which has not been the subject of tampering or fraud, should be accepted as the true result of the election. In the instant case no evidence has been presented to show that the election inspectors of precinct No. 7 falsified their return. On the other hand, the evidence presented overwhelmingly demonstrates that the ballots contained in the ballot box of precinct No. 7, which had been forcibly opened after the election, had been changed with new ballots in order to give a great majority of the votes

in said precinct to the contestant. The doctrine that in cases of this nature the return of the inspectors should prevail is held in numerous decisions by American and Philippine courts, and by legal writers. (*See:* McCrary on Election, 4th Ed., p. 348; Valenzuela *vs.* Carlos et al., 42 Phil., 428, 430, 455; 20 C. J., 255; Rhode *vs.* Steinmetz, 25 Colo., 308; Cobb *vs.* Berry, 168 Pac., 46; San Juan *vs.* Cornejo et al., 53 Phil., 230; Garchitorena *vs.* Crescini et al., 39 Phil., 258).

2. ID.; IRREGULARITIES IN ELECTION; ANNULMENT OF ELECTION.—Irregularities committed after an election the result of which is contained in the return of the election inspectors, does not annul the election. The case of Garchitorena *vs.* Crescini, et al (*supra*), is not applicable to the case at bar, because the irregularities treated therein were committed before and during the casting of votes; but supposing hypothetically that it is applicable, only the votes in the precinct where irregularities were committed during the election can be annulled, but not the whole election.

APPEAL from a judgment of the Court of First Instance of Misamis Oriental. Belmonte, J.

The facts are stated in the opinion of the court.

T. F. Cachero and *Sotto & Sotto* for appellant.
Tañada, Pelaez & Teehankee for appellee.

JUGO, *J.:*

This is an appeal from the decision of the Court of First Instance of Misamis Oriental, the dispositive part of which reads as follows:

"Wherefore, the Court renders judgment dismissing the motion of protest of the protestant Gorgonio B. Tagarda and the protestee Jose P. Roa is absolved therefrom, with the right to continue assuming office as Mayor of the municipality of Balingasag, Misamis Oriental. The protestant is condemned to pay the costs and other incidental expenses.

"A copy of this judgment shall be furnished the Commission on Elections. The Provincial Fiscal is ordered to make an investigation of the frauds committed in the ballot box No. 7, to find out the author or authors thereof, and file the corresponding criminal action."

In the general election of November 11, 1947 in the municipality of Balingasag, Misamis Oriental, the candidates for mayor were Jose P. Roa, Nemesio Vega, Gorgonio Tagarda, Jose Reyes, and Jose Valmores.

On November 27, after the returns of the election inspectors of said municipality had been received, the municipal council, acting as municipal board of canvassers, declared that Jose P. Roa had received 1,163 votes, Nemesio Vega 1,015 votes, Gorgonio Tagarda 970 votes, Jose Reyes 443 votes, and Jose Valmores 410 votes; and proclaimed Jose P. Roa the mayor-elect of said municipality.

Gorgonio Tagarda who was then the mayor, filed a motion of protest against Jose P. Roa, alleging that in the follow-

ing precincts, 153 (should be 133) ballots cast in his favor were read and counted in favor of Jose P. Roa, as follows:

"Precinct No.	7	53	ballots
"do do	8	20	do
"do do	13	35	do
"do do	15	25	do
"Total		133	ballots"

and that if these 133 votes were deducted from the 1,163 votes awarded to Roa and added to the 970 votes adjudicated to Tagarda, they would have the following votes:

"Tagarda	1,123 (should be 1,103)
"Roa	1,010 (should be 1,030)"

or a plurality of 119 votes (should be 73) in favor of Tagarda.

In his answer Roa denied the allegations of the contestant and alleged that no irregularity whatsoever had been committed by the election inspectors. This was followed by a supplemental answer, averring facts discovered after the opening of the ballot boxes by the commissioners appointed by the court.

The court appointed three commissioners to open the ballot boxes of the above-mentioned precincts, read and count the ballots, observe any irregularity that they might see in them, and submit their report to the court.

At the trial the contestant presented Exhibit A, which is the report of the commissioners; Exhibit B, the canvass made by the municipal board of canvassers; Exhibit C, the election return for precinct No. 7; Exhibits D, D–1 to D–121, E, E–1 to E–3, ballots from precinct No. 7; Exhibit F, F–1 to F–7, ballots from precinct No. 8; Exhibits G, G–1 to G–21, ballots from precinct No. 13; Exhibits H, H–1 to H–19, ballots from precinct No. 15, and Exhibit I, the sketch of the municipal building and the office of the municipal treasurer of Balingasag.

The contestee presented evidence to show that the ballot box from precinct No. 7 had been tampered with and the ballots therein changed, in such a manner that said ballots as found by the commissioners and presented to the court should be rejected as evidence for the contestant.

It should be borne in mind that fraud can seldom be proved by direct evidence; resort must be made to circumstantial evidence. The overwhelming mass of circumstantial evidence with regard to the tampering of the ballot box and ballots in precinct No. 7 may be briefly set forth as follows:

According to the return of the election inspectors in precinct No. 7, Roa received 121 votes while Tagarda re-

ceived 12. In the recounting made by the commissioners, Roa was awarded 15, and Tagarda 122. It will be seen that the correct result of the voting in precinct No. 7 is decisive of this election protest.

In Exhibit A, it appears that 400 ballot forms in blank were received by the board of election inspectors of said precinct from the municipal treasurer of Balingasag; that 347 were used, leaving a balance of 53 unused ballots which were found intact in the recounting; that of the 347 used ballots, only 241 were found by the commissioners in the ballot box for valid ballots, leaving a balance of 106 ballots which must have been illegally disposed of. According to the return of the board of election inspectors of precinct No. 7, Roa received 121 votes, but according to the commissioners' report he received only 15. Subtracting 15 from 121 gives the sum of 106, which exactly coincides with the number of ballots missing. This coincidence is very significant. According to Exhibit A, 347 ballots were used in precinct No. 7, but according to Exhibit 3 (list of voters for precinct No. 7), 4 (list of voters in precinct No. 7 who voted) and 6 (minutes of voting, precinct No. 7), 249 ballots were used in said precinct, giving a difference of 98 ballots unaccounted for.

It was discovered on January 5, 1948 that one of the galvanized iron sheets of the roof over the office of the municipal treasurer had been cut crosswise through its entire width, leaving a wrinkle which would indicate that it had been folded backward to afford an opening sufficient for a man to enter the office of the municipal treasurer where the ballot boxes were kept. Some of the nails of that roof sheet had been removed, and two other nails were loose. There were fresh cement patches to cover the small holes corresponding to the nails. A piece of cardboard had ben inserted into the opening made by the sheet upon being folded backward, evidently to prevent leakage.

In the ballot box of precinct No. 7, six ballots, marked Exhibits D–6, D–25, D–52, D–67, D–100 and D–114, bearing serial Nos. 2782, 2781, 2798, 2832, 2776, and 2791, respectively, were found. These serial numbers were not among those serial numbers of the ballots which had been issued to the voters in said precinct during the election day by the inspectors, as shown by Exhibit 4, the certificate of unused ballots.

In the same ballot box, ballots D–27, D–33 and D–102, the name of Tagarda is traced (not erased) near the line for governor. This would show tampering, for the electors could not have made these tracers.

In the same ballot box 15 ballots appear to have been irregularly out or detached on top.

The ballot box had been forcibly opened by removing two padlocks, so that the lid of the box on two sides might be lifted and a hand inserted into it to extract ballots from the box. The two original padlock which were of American brand had been substituted with padlocks made in Canada.

It should be taken into consideration that the contestant was then the municipal mayor of Balingasag and almost all of the employees of the said municipality had been appointed or recommended by him. His protest is quite far-fetched because he occupies only the third place among the candidates.

With regard to the ruling of the trial court that certain ballots of precinct No. 7 had been prepared by one hand, this Court is not prepared to so hold after examining the ballots.

This Court, however, affirms the ruling of the trial court with regard to the rejection of certain ballots in precincts Nos. 8, 13, and 15, on the grounds stated by it, that is, the name of the contestee is on the wrong line or the name is illegible, etc.

As a general rule, the ballots found in a ballot box by the commissioners of the court would be the best evidence of the votes cast. However, when the ballots and the ballot box have been so tampered with after the elections that they do not represent the votes cast, they lose their probative value and the return of the election inspectors, which has not been the subject of tampering or fraud, should be accepted as the true result of the election. In the present case no evidence has been presented to show that the election inspectors of precinct No. 7 falsified their return. On the other hand, the evidence presented overwhelmingly demonstrates that the ballots contained in the ballot box of precinct No. 7, which had been forcibly opened after the election, had been changed with new ballots in order to give a great majority of the votes in said precinct to the contestant. The doctrine that in cases of this nature the return of the inspectors should prevail is held in numerous decisions by American and Philippine courts, and by legal writers. Some of them are cited below:

"Although the general rule is that the ballots themselves are the best evidence of the number of votes cast, and for whom cast, yet this rule can have no application to a case where the ballots have been tampered with after they were deposited in the ballot box. In such a case the value of the ballots as evidence is almost totally destroyed, and the returns made by the officers of election presiding at the polls may become better evidence than the ballots." (McCrary on Election, 4th Ed., p. 348).

"10. ID.; VIOLATION OF BOXES: OFFICIAL RETURNS TO CONTROL.—Where the evidence shows that the ballot boxes have been violated and their contents changed, the original count must prevail. Before the ballots found in a box can be used to set aside the returns the

court must be sure that it has before it the ballots deposited by the voters." (Valenzuela *vs.* Carlos et al., 42 Phil., 428, 430.)

"The facts upon which the trial judge relied for the suppression of these returns were deduced by him chiefly from the internal evidence of fraud, supplied by the contents of the boxes themselves. Upon these features of the case we shall presently make some comment, but it must first be stated that in our opinion by a clear preponderance of evidence both internal and external, the ballot boxes in the several precincts of Meycauayan had been tampered with before their contents were the subject of inspection in this case. It results that the facts revealed upon opening said boxes cannot serve as a basis for setting the official return aside. It is well settled as a legal proposition that where the evidence shows that the ballot boxes had been violated and their contents changed, the original count must prevail; and it has been held that the fact that some of the ballots in a box have been tampered with impeaches the integrity of all in that box on a recount. (20 C. J., 255). Before the ballots found in a box can be used to set aside the returns, the court must be sure that it has before it the identical ballots deposited by the voters. Rhode *vs.* Steinmetz, 25 Colo., 308; Cobb *vs.* Berry, 168 Pac., 46." (Id., 428, 455.)

"1. ELECTIONS: VIOLATION OF BALLOT BOX; OFFICIAL RETURNS.—When it appears that a ballot box has been unlawfully opened and its contents disturbed to the extent that it is uncertain whether the ballots found therein were actually cast by the voters, such ballots cannot be accepted for purposes of revision, and the official returns, if not otherwise impeached, must be accepted as stating the true number of votes cast." (San Juan *vs.* Cornejo et al., 53 Phil., 230.)

The appellant contends that at any rate the election should be declared null and void on account of the irregularities committed in precinct No. 7, citing to this effect the case of Garchitorena *vs.* Crescini *et al.* (39 Phil., 258). It will be noticed, however, that in said case the irregularities were committed before and during the casting of the votes, in such a way that in certain precincts of the province of Ambos Camarines it could not be determined how the electors voted. In the present case, the irregularities in precinct No. 7 were committed after the election had been finished, the result of which is contained in the return of the election inspectors. The election in precinct No. 7 should, therefore, not be annulled. But even supposing hypothetically that the above decision is applicable, it will be seen that in said case only the votes in the precincts where irregularities were committed during the election in said province were annulled, but not the whole election for provincial governor. Similarly, in the present case only the election in precinct No. 7 could be annulled, but then the contestee would still have a plurality of 84 votes as shown by the following table:

Precinct No.	Tagarda	Roa
1	82	36
2	63	14
3	32	26

Precinct No.	Tagarda	Roa	
4	46	32	
5	18	28	
6	8	65	
7	Ann.	Ann.	
* 8	15	59	
9	10	73	
10	4	61	
11	3	86	
12	17	69	
* 13	11	124	
14	86	66	
* 15	25	98	
16	131	83	
17	211	70	
18	196	52	
Totals	958	1,042	84 (plurality)

NOTE:

* Precincts with contested votes where Court made awards and deductions.

Tabulating the votes in the municipality of Balingasag in acordance with the rulings in the present decision; that is, without annulling the votes in precinct No. 7, the contestee has a plurality of 193, thus:

Precinct No.	Tagarda	Roa
1	82	36
2	63	14
3	32	26
4	46	32
5	18	28
6	8	65
* 7	12	121
* 8	15	59
9	10	73
10	4	61
11	3	86
12	17	69
* 13	11	124
14	86	66
* 15	25	98
16	131	83
17	211	70
18	196	52
Totals	970	1,163

NOTE:

* Precincts with contested votes and where Court made awards and deductions.

In view of the foregoing, the judgment appealed from is hereby affirmed in all its parts, with costs against the appellant. It is so ordered.

De la Rosa and *Rodas, JJ., concur.*

Judgment affirmed.

[No. 2855–R. September 30, 1948]

TRIFILO C. TUMANUT, protestante y apelante, *contra* DIONISIO FRANCISCO ET AL., protestados y apelados [a]

1. LEY ELECTORAL; ANULÁCIÓN DE BALOTAS; REGLA 23 DEL ARTÍCULO 149 DEL CÓDIGO ELECTORAL REVISADO; CASO DE AUTOS.—La regla 23 del artículo 149, del Código Electoral Revisado, exige que aparezca claramente que la balota se haya preparado por dos distintas personas durante la votación, antes de que se deposite en la urna. En el caso de autos, no existe prueba alguna, ni aun indiciaria en que basar que las cuatro balotas (Exhíbitos B–5, B–11, B–17 y D–2) se prepararon cada una por dos diferentes manos antes de que fuesen depositadas en la urna. Declararlas nulas, solo porque alguién quiso fraudulentamente engrosar los votos de sus candidatos a gobernador y tercer miembro, llenando para estos los espacios que se dejaron vacios, o trató deliberadamente de restar votos al protestado, equivaldría a privar de sus balotas a los electores que las han llenado con los nombres de sus candidatos, en cumplimiento de un deber cívico.
2. ID.; ID.; VOTO DESPERDIGADO.—El voto emitido a favor de uno que no ha presentado certificado de candidatura o un candidato para un cargo al cual él no se ha presentado, se considera voto desperdigado (astray vote), que no anula la balota en se totalidad. (Véase: Reglas 11 y 13 del Art. 149, Código Electoral Revisado.)
3. ID.; APELACIÓN; PLAZO DE TRES MESES PARA DECIDIR UNA APELACIÓN ELECTORAL; TRIBUNAL DE APELACIONES, SU JURISDICCIÓN PARA DECIDIR UNA APELACIÓN DESPUÉS DEL TRANSCURSO DEL PLAZO PRESCRITO; ARTÍCULO 178 DEL CÓDIGO ELECTORAL REVISADO.—El precepto del artículo 178 del Código Electoral Revisado es meramente directorio, y que el plazo de tres meses que fija para el despacho de un asunto electoral, computado desde la fecha de su archivo, no es fatal, cuyo transcurso despojo de su jurisdicción a este Tribunal para decidirlo en sus méritos. (Véase: Cal. Jur. 10, pp. 144–145; Bernardo *vs.* Rue, 146 Pac. Rep., 79; Tanseco *vs.* Arteche, 57 Phil., 230–231.)

APPEAL from a judgment of the Court of First Instance of Isabela. Arranz, J.

The facts are stated in the opinion of the court.

Juan L. Durian for appellant.

Mauro Verzosa y *Herminio F. Verzosa* for appellee.

DE LA ROSA, *M.:*

Las elecciones generales del 11 de noviembre de 1947, en el municipio de Cordón, de la provincia de Isabela, dieron el siguiente resultado para el cargo de alcalde:

Candidatos	Votos
"Dionisio Francisco	372
"Trifilo C. Tumanut	356
"Agapito C. Cesar	290
"Estanislao Naval	129
"Gregorio Domingo	20
"Servando Valdez	19

[a] See Resolution Supreme Court G. R. No. L–2657, dated January 24, 1949. Petition to review on certiorari the decision of the Court of Appeals is dismissed.

Consecuentemente, la junta municipal de escrutinio de dicho municipio, en 12 de noviembre de 1947, proclamó a Dionisio Francisco electo alcalde.

Tumanut, que ocupara el segundo lugar, impugna esta elección de Francisco, alegando en su moción protesta que se han cometido irregularidades, anomalías y fraudes en los precintos 4 y 7 del expresado municipio, pero al llamarse a vista esta causa el 19 de enero de 1948, su representación descartó el precinto 4, y mantuvo su protesta solamente en cuanto al 7.

El Juzgado *a quo* nombró tres comisionados para la revisión de las balotas, documentos y papeles de las urnas del precinto 7, quienes, llenado su cometido, presentaron su informe Exhíbito A, en el que hacen constar:

"The white ballots (items 13 and 14) were assorted as to each and every candidate voted for Mayor, as follows:

Dionisio Francisco	137	
Three ballots wherein the name is written on line for Member, Provincial Board	3	
One ballot wherein the name is written on line for Vice-Mayor	1	—141
Trifilo Tumanut	34	
One ballot wherein the name is written on line for Member, Provincial Board	1	— 35
Agapito Cezar	17	— 17
Estanislao Naval	5	
One ballot wherein the name is written on line for Vice-Mayor	1	
One ballot wherein the name is written on line for Member, Provincial Board	1	— 7
Gregorio Domingo	2	— 2
Servando Valdez	0	— 0
Blank ballot		1
Total number of ballots found		203

"APPRECIATION OF BALLOTS

Dionisio Francisco:	
Out of 137 votes:	
Accepted as valid	94
Questioned by Protestant	43
Two ballots found in Red Box with the name of D. Francisco voted for Mayor are claimed by protestee as valid votes for him	2
Trifilo Tumanut:	
The Commission unanimously agree and the protestee accepts to be valid	34"

Al someterse el informe Exhíbito A de los Comisionados, el protestante impugnó las 43 balotas que en el se dice han sido cuestionadas, y para su identificación pidió que fuesen marcadas como Exhíbitos B, B–1, a B–27; C, C–1, a C–6; D, D–1, a D–5; E y E–1.

De estas 43 balotas el Juzgado de origen rechazó once (11) por invalidas, y son las marcadas B–5, B–7, B–9, B–11, B–17, B–27, C–3, C–4, C–6, D–2 y D–5.

Las 26 balotas, Exhíbitos B, B–1, B–2, B–3, B–4, B–6, B–8, B–10, B–12, B–13, B–14, B–15, B–16, B–18, B–19,

B–21, B–22, B–23, B–24, B–25, B–26, B–27; C, C–1, C–2 y E, que según se alega han sido preparadas por no menos de dos manos cada una, se admiten como votos válidos a favor de Francisco, porque un examen de las mismas, de los rasgos principales de sus letras, la firmeza del pulso de los votantes, en unas, así como la vacilación y poco tino, en otras, que indican escaso hábito, revelan que cada una ha sido llenada por una sola mano.

El Juzgado *a quo* consideró correctamente que las dos líneas, que aparecen en el segundo espacio para miembros de la junta provincial de la balota Exhíbito C–2, sólo significan el desistimiento del elector de llenar dicho espacio. (Art. 148, p. 18, C. E. R.)

Las dos balotas, Exhíbitos B–7, donde el apellido "FRANCICO," en el espacio para alcalde, aparece escrito con letras mayusculas de molde, y B–9, en que el nombre "D. Francisco" comienza con letras iniciales mayusculas de molde y las minusculas aparecen descontinuadas, lo que no sucede en los otros nombres con los cuales se ha llenado, de conformidad con el artículo 149 del Código Electoral Revisado, de que

"18. Unless it should clearly appear that they have been deliberately put by the voter to serve as identification mark * * *, the use of two or more kinds of writing * * *, shall be considered innocent and shall not invalidate the ballot,"

se admiten como votos válidos a favor de Francisco, pues que parece evidente el propósito de los que prepararon las mismas, que no hubiese dificultad en su lectura.

Las cuatro balotas, Exhítos B–5, donde el apellido "Visaya," escrito en el espacio para el cargo de Gobernador, difiere en sus rasgos de los nombres "D. Francisco y E. Manano," escritos en los espacios para alcalde y vice alcalde, B–11, B–17 y D–12, en que los nombres "V. Mesa" y "V. Salvador," escritos en los espacios para gobernador y miembros de la junta provincial, en las dos primeras, y "V. Mesa," en el espacio para gobernador, en la última, han sido por una sola mano en estas tres balotas, diferente de las que llenaron las mismas del espacio para el cargo de alcalde al del último concejal votado, son válidas a favor de Francisco.

La Regla 23 del artículo 149 del Código Electoral Revisado, dice:

"Any ballot which clearly appears to have been filled by two distinct persons before it was deposited in the ballot box during the voting is totally null and void."

En esta disposición legal se exige que aparezca claramente (clearly appears) que la balota se haya preparado por dos distintas personas durante la votación, antes de que se deposite en la urna. No existe prueba alguna, ni aun indiciaria, en que basar que estas cuatro balotas se prepararon cada una por dos diferentes manos antes de que fuesen depositadas en la urna. Declararlas nulas, solo porque alguien quiso fraudulentamente engrosar los votos

de sus candidatos a gobernador y tercer miembro, llenando para estos los espacios que se dejaron vacios, o trato deliberadamente de restar votos al protestado, equivaldría a privar de sus balotas a los electores que las han llenado con los nombres de sus candidatos, en cumplimiento de un deber cívico.

Las seis balotas, Exhíbitos B–20, C–5, D, D–1, D–3 y D–4, en las que, para el cargo de alcalde, se leen los nombres "D. Francis," "D prasico," "D Francio," "D Franaisco," "D Franusco" y "D Fcissoco," se admiten como votos válidos a favor de Francisco, de acuerdo con la regla 2 del artículo 149 del Código Electoral Revisado, conocida por *idem sonans*. (Cosculluela *vs.* Gaston, R. E. C. Francisco, p. 217.)

El Juzgado de origen atinadamente apreció que el nombre "Gaulibisay," escrito en el espacio para gobernador de la balota C–5, no es ninguna marca, sino el nombre del candidato a Gobernador Gabriel Visaya. A simple vista se ve que el que preparó esta balota es de muy limitada instrucción.

La balota C–3, tachada por marcada, porque entre la inicial D y el apellido Francisco, que aparece en el espacio para alcalde, se ha intercalado el prefijo "Sennior," se admite como voto válido a favor de Francisco. Según la Regla quinta del artículo 149 del Código Electoral Revisado este prefijo no anula la balota; y la circunstancia de que se haya puesto entre la inicial del nombre cristiano y el apellido carece de materialidad, porque como no lo llevan los otros nombres, hubiera sido lo mismo anteponerlo a la inicial del nombre.

La balota C–4, fué rechazada por haberse sostenido que el nombre "Felesiano Samonte" que no es el de ningún candidato a gobernador, escrito encima del nombre "M Versoss," en el espacio para gobernador, constituye una marca de identificación.

Estos dos nombres, "Felesiano Samonte y "M Versoss," están escritos en el espacio para el cargo de gobernador. Si los dos fueran de candidatos, la regla aplicable sería la undécima del artículo 149 del Código Electoral Revisado, que declara nulo el voto a favor de dos o más candidatos para un cargo, cuando la ley sólo autoriza la elección de uno, más ella no afecta la validez de los votos contenidos en la misma balota a favor de otros candidatos.

Pero como Samonte no era candidato a gobernador, según la regla décimotercera del mismo artículo, el voto emitido a favor de uno que no ha presentado certificado de candidatura o un candidato para un cargo al cual el no se ha presentado, se considera voto desperdigado (astray vote), que no anula la balota en su totalidad.

Por estas dos reglas, 11 y 13, esta balota C–4 es también válida a favor de Francisco.

La balota C–6, donde sobre las dos líneas paralelas que separan las instrucciones, de como hay que votar, de los

espacios para cargos provinciales y municipales, que se deben llenar, se ha escrito "Nasional Party," fue rechazada por marcada. Parece indudable que el votante al preparar esta balota estaba imbuido de la idea del "block voting," y por eso escribió el nombre de su partido, dejando en blanco el cargo para gobernador, en la creencia de que votaba al candidato a gobernador de su partido. No es de creer que el que ha preparado esta balota. que es de buena caligrafía, con trazos que denotan destreza, se haya propuesto anular su propio voto. La misma se admite como voto válido a favor de Francisco (C. E. R., artículo 139, Reglas 19 y 20).

La representación de Tumanut retiró su objeción a la balota Exhíbito E–1.

La balota D–5 ha sido, con razón, rechazada por inelegible.

Los votos obtenidos por el protestante y el protestado en cada uno de los siete precintos electorales del municipio de Cordón, de acuerdo con las actas Exhíbitos I, J, K, L, M, N y H, ascienden:

Precinto	Acta	Tumanut	Francisco
1	I	47	15
2	J	67	15
3	K	80	15
4	L	59	20
5	M	35	91
6	N	34	80
7	H	34	136
	Totales	356	372

En el report Exhíbito A de los comisionados se han apreciado a favor de Francisco 137 votos, de los cuales fueron impugnados 43, y admitidos, sin objeción, 94. Como de las 43 balotas cuestionadas por Tumanut solamente la D–5 fué rechazada por inelegible, Francisco ha obtenido en el precinto 7 el mismo número de votos, 136, que la junta de inspectores le ha adjudicado, consignado en el acta Exhíbito H. No se ha alterado, por lo tanto, el resultado de la elección en el municipio de Cordón, Isabela, para el cargo de alcalde, tal como fue proclamado por la junta municipal de escrutinio del mismo, el 12 de noviembre de 1947, al día siguiente de los comicios alli celebrados.

* * * * * * *

En su alegato, Tumanut relaciona como error del Juzgado *a quo:*

"III

The lower court erred in making a finding that the protestant appellant could not present a handwriting expert."

Una revisión del record demuestra que el Juzgado *a quo* ha pospuesto varias veces la continuación de la vista de este asunto para dar oportunidad al apelante Tumanut a que un calígrafo pudiera examinar y testificar sobre las 43 balotas por él objetadas. A su petición, inclusive se ha expedido citación subpœna a un experto del NBI (Na-

tional Bureau of Investigation), pero como esta oficina ha sugerido que se sometieran previamente a su examinador de documentos las balotas cuestionadas, lo cual suponía se envió a Manila, el Juzgado no quiso tomar ningún riesgo. En ello, el Tribunal Supremo, en un recurso de mandamus ejercitado por el protestante, le dío la razón, diciendo:

"Considering the petition for mandamus and the urgent petition for the issuance of a writ of preliminary injuction in L–2091, Tumanut *vs.* Judge Arranz et. als., and it appearing that the petition for mandamus, if granted, would cause delay in the proceedings, and that the proper procedure is for the petitioner to have his own handwriting expert who could examine the ballots because the transmittal of said ballots is not safe: Petition denied. Mr. Justice Perfecto voted to require respondents to answer the said petitions." (Exhibit R.)

* * * * * * *

El protestado apelado, en su moción del 27 de agosto último, alega que este Tribunal de Apelaciones ha perdido su jurisdicción para decidir esta causa electoral, porque el plazo fijado por la ley de tres meses para despacharlo, desde la fecha de su archivo, ya ha transcurrido.

Este expediente se recibió incompleto y se archivó en la Escribanía de este Tribunal el 26 de mayo de 1948. En 15 de junio de 1948 la transcripción de las notas taquigráficas tomadas durante la vista se recibió por el Escribano, y éste, al día siguiente notificó al apelante que las pruebas aportadas estaban a su disposición para la preparación de su alegato. El apelante recibió esta notificación el 7 de julio de 1948, y en 6 de agosto siguiente presentó su alegato. El apelado archivó su alegato en 2 de septiembre de 1948, fuera ya del plazo de tres meses, el cual expiró en 26 de agosto. Llamada a vista este expediente el 14 de septiembre de 1948, a petición del apelante se le concedió dos días para presentar una oposición a la moción de que se trata y un memorandum sobre los méritos de la causa, en vez de un argumento oral.

Se verá que el mismo apelante presentó su alegato fuera ya del plazo de tres meses fijado por la ley.

En California Jurisprudence, se lee:

"88. FINDINGS AND JUDGMENT.—Section 1118*a* of the Code of Civil Procedure provides that the court shall continue in special session to hear and determine all issues arising in the contested elections, and

'Within ten days after the submission thereof the court shall find its findings of fact and conclusions of law and immediately thereafter judgment thereon shall be entered.'

"This provision is directory, and a failure to comply with it in regard to the time limited does not deprive the court of jurisdiction to render its decision or enter judgment." (10 pp. 144–145.)

En Bernardo *vs.* Rue, el Tribunal de Apelación del primer distrito de California sostuvo:

"The first point urged by the appellant is that the case having been submitted and the motion for nonsuit granted on May 8, 1914, it was the duty of the court under section 1118*a* of the Code of

Civil Procedure to file its findings and enter its judgment within ten days after the submission of the case; and that the court, having failed to do so within said time, lost jurisdiction to render its decision or enter a judgment after the expiration of the ten day period within which it was permitted by the statute to act; and hence that the judgment rendered and entered in this proceeding is a nullity and must be reversed. We incline to the opinion that the sections of the act governing the court's action upon the trial of proceedings of this character are directory, in the absence of an express provision of the statute declaring them to be mandatory, and that, while the recent amendment of the Code of Civil Procedure, by which section 1118*a* was added, was evidently intended to hasten the work of the courts in passing upon election contests, it was not intended thereby to provide the parties to an election contest should lose valuable rights because the delay of the judge in making or filing his findings and judgment. We think therefore that this point of the appellant is not well taken." (146 Pacific Reporter 79.)

En Tanseco *vs.* Arteche, el Tribunal Supremo sentó esta doctrina:

"A question is also made as to whether the Court of First Instance may not have lost jurisdiction over the case by failure to decide it within the time fixed by law. In section 408 of the Election Law it is provided that a proceeding of the character of that now before us shall be decided by the court within thirty days after the filing of the complaint. The decision in this case was filed in the Court of First Instance on August 22, 1931, which was within thirty days of the receipt of the papers in that court but more than thirty days after the proceeding had been begun in the Supreme Court. Upon this the argument is planted that, supposing the proceeding in the Court of First Instance of Samar to be a mere continuation of the proceeding that had been filed in the Supreme Court, it must follow that the decision was not filed within the necessary thirty days; and as a consequence so it is claimed the court of origin had no authority to make any decision at all. The contention is untenable. The provision of law that the proceeding shall be decided within thirty days after the filing of the complaint is in its nature directory only, and a failure to comply with such requirement does not affect the jurisdiction of the court. We are accordingly of the opinion that none of the technical objections made against the proceeding by the respondent are valid." (57 Phil., 230–231.)

Con estos precedentes legales, debe establecerse que el precepto del artículo 178 del Código Electoral Revisado es meramente directorio, y que el plazo de tres meses que fija para el despacho de un asunto electoral, computado desde la fecha de su archivo, no es fatal, cuyo transcurso despoje de su jurisdicción a este Tribunal para decidirlo en sus méritos.

La sentencia del juzgado *a quo* de que se apela, sosteniendo que el protestado Dionisio Francisco ha sido legalmente elegido para el cargo de alcalde del municipio de Cordón, de la provincia de Isabela, y sobreseyendo esta protesta electoral, se confirma en todas sus partes, con las costas al apelante. Así se ordena.

Jugo y *Rodas, M.M.*, están conformes.

Se modifica la sentencia.